

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL
WITH PROOF
OF SERVICE

74-2145

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

DOMINICK ROMANO,

Petitioner-Appellant,

-against-

UNITED STATES OF AMERICA,

Respondent-Appellee

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

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UNITED STATES ATTORNEY, SOUTHERN DISTRICT OF NEW YORK
Attorney for Respondent-Appellee
United States Courthouse
Foley Square
New York, N. Y.

(4405A)

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

74 CIV. 943

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

JUDGE MAC MAHON

Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

DOMINICK ROMANO

vs

UNITED STATES OF AMERICA

For plaintiff:

Rothblatt Rothblatt Seijas & Peskin
232 West End Ave., NYC 10023 787-7001

For defendant:

U.S. Attorney

#22-55

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

5 mailed X

Clerk

7/1/74 Rothblatt
7/2/74 U.S. Attorney
7/14/74 Rothblatt
7/17/74 Mac

15

15

6 mailed ✓

Marshal

Cost of Action:

Docket fee

Motion to vacate

Sentence

Witness fees

Motion arose at:

Depositions

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DOCKET ENTRIES

DOMINICK ROMANO -v- U.S.A.

74 Civ. 943

"AC MAISON, J.

DATE	PROCEEDINGS	Date Order or Judgment Noted
Feb. 25-74	Petition to vacate sentence under 2255.	
Feb. 25-74	Filed memo of law in support of petition.	
Feb. 28-74	Filed affdvt. of service of motion & memorandum upon U.S. Atty.	
Mar. 19-74	Filed stip. & order extending time for respondent to answer to 5-3-74--MacMahon, J.	
May 2-74	Filed stip & order that time for respondent to answer is extended to 6-3-74....MAC MAHON, J.	
May 23-74	Filed Govt. Memo of law.	
Jul 25-74	Filed Memo-End on back of motion filed 2-25-74.. Moreover, it clearly appears from the files and records in this case, which are accurately summarized in the opposing affdvt of D.J. Beller, Asst U.S. Syyy. which summary we hereby adopt as our findings, that petitioner's present claims are frivolous and without merit and that he is entitled to no relief..Accordingly, the within petition is dismissed without a hearing..So Ordered..MacMahon, J...m/n	
Aug. 14-74	Filed petitioners notice of appeal from order of 7-25-74, denying motion to vacate sentence. Copy mailed to U.S. Att'y, SDNY.	
Aug. 28-74	Filed plttfs notice that original record on appeal has been certified & transmitted to USCA.	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOMINICK ROMANO,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

NOTICE OF MOTION
TO VACATE SENTENCE

Ind. #64 CR 828

PLEASE TAKE NOTICE that upon the annexed affidavit of Dominick Romano and upon all of the papers and proceedings had herein, the undersigned will move this Court before the Hon. Lloyd F. MacMahon at the United States Courthouse at Foley Square, New York on the 25 day of March, 1974 at 9:30 o'clock in the forenoon or as soon thereafter as counsel can be heard for an order vacating the petitioner's sentence and for such other and further relief as to the Court may seem just and proper.

DATED: New York, New York
February 22, 1974

Yours, etc.

ROTHBLATT, ROTHBLATT, SELJAS
& PESKIN
Attorneys for Petitioner
232 West End Avenue
New York, New York 10023
(212) 787-7001

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOMINICK ROMANO,
Petitioner

-against

UNITED STATES OF AMERICA,

Respondent

AFFIDAVIT IN SUPPORT OF
MOTION TO VACATE SENTENCE
IND. #64 CR 828

STATE OF GEORGIA)
COUNTY OF FULTON) ss:

DOMINICK ROMANO being duly sworn deposes and says:

. I am the petitioner in the above entitled action and I make this affidavit in support of this application, pursuant to Title 28, United States Code, Section 2255, to vacate the sentence entered herein against me.

2. I am an inmate at the United States Penitentiary Atlanta, Georgia serving the sentence imposed as a result of the conviction challenged herein.

3. I was indicted on September 30, 1964, by a Federal Grand Jury for the Southern District of New York, for conspiracy to violate Title 21, U.S.C. §§ 173 and 174. (Narcotic Drug Import-Export Act)

4. After trial by jury the Honorable Lloyd F. MacMahon, Judge, presiding, I was found guilty as charged in the indictment.

5. On March 15, 1969, I was sentenced by Judge MacMahon to a term of twenty years in the custody of the Attorney General of the United States and a committed fine of five thousand dollars (\$5,000.00), the maximum penalty allowable under the statute 21 U.S.C. §§ 174 and 174.

MOTION TO VACATE SENTENCE

6. Timely appeal was perfected to the Second Circuit Court of Appeals, the judgment of the lower court being affirmed as reported in United States v. Guanti, 421 F. 2d 792 (1970).

7. Petitions for rehearing and rehearing en banc were denied by the Second Circuit Court of Appeals on June 2, 1970.

8. Petition for writ of certiorari to the United States Supreme Court was denied as reported in 400 U.S. 832 (1970).

9. A prior Motion to Vacate Sentence submitted to this Court was denied on January 5, 1972.

10. Timely appeal of said denial was perfected to the Second Circuit Court of Appeals, the lower court opinion being affirmed on May 30, 1972.

11. Petitions for rehearing and rehearing en banc were denied by the Second Circuit Court of Appeals on July 3, 1972.

12. Petition for writ of certiorari to the United States Supreme Court was denied on October 16, 1972.

13. The instant motion represents the second collateral proceeding instituted by the petitioner in the cause sub judice.

14. The sentence of the court was imposed on violation of the Constitution of the United States because perjured testimony was knowingly used in the prosecution of the case.

15. The grounds for this motion constitute a resubmission of the issues presented in petitioner's prior motion to vacate sentence. This motion is not a "successive motion" subject to dismissal because (1) no hearing was held on the previous motion (2) the facts alleged in support of this motion differ from those presented in petitioner's initial motion and were not deliberately withheld from the prior motion (3) the prior motion was dismissed

MOTION TO VACATE SENTENCE

without hearing as failing to allege a factual basis for the relief sought.

16. The confinement of your affiant is in violation of the Constitution and laws of the United States, because the prosecution knowingly and willfully elicited and allowed to stand uncorrected what it knew to be perjured testimony. The specific instances in which these violations occurred are as follows:

(a) the testimony of CLARENCE ASPELUND that his narcotic dealings with JOSEPH CAHILL and/or CHARLES HEDGES continued until "around Christmas" and "up to 1960".

(b) the testimony of CHARLES BOURBONNAIS that he was employed as a Purser on the Ambassador Flight of Trans-World Airways, flying from San Francisco to Paris in the year 1959.

(c) the elements of the testimony of CHARLES HEDGES that corroborate the perjured testimony of BOURBONNAIS as stated hereinabove. [See (b)]

17. Petitioner's confinement is further in violation of the Constitution and laws of the United States because the prosecution deliberately withheld evidence favorable to the defense as specifically set forth as follows:

(a) The Union Book and Seaman's Papers of CLARENCE ASPELUND.

(b) The Trans-World Airways employment record of CHARLES BOURBONNAIS.

(c) The fact that ASPELUND had been assigned to ships other than the EXOCHORDA, to wit, the EXETER and the EXCALIBUR.

(d) the minutes of testimony of the witness who appeared before the 1963 Grand Jury that was able to inject the names of defendants other than CAHILL or HEDGES into the conspiracy charged.

MOTION TO VACATE SENTENCE

18. THOMAS DUGAN, Agent of the Bureau of Narcotics and Dangerous Drugs, sat at the prosecution table throughout the trial and remained silent throughout the perjured testimony of each of the above named witnesses. Although Dugan was thoroughly familiar with each and every aspect of the case and was in possession of the physical evidence contradicting the testimony of ASPELUND, BOURBONNAIS and HEDGES, he did not make this evidence available to defense counsel.

19. The suppressions of exculpatory evidence and evidence as related to the credibility of the governments's "paid" witnesses violates the mandate of the United States Supreme Court in Brady v. Maryland, *infra*, et seq.

20. As the perjurious testimony of CLARENCE ASPELUND and the suppression of evidence pertinent thereto related to the Statute of Limitations and the jury finding of a single continuous conspiracy prerequisite to a finding of guilty, the actions of the prosecution were a patent invasion of that body's province as the sole finders of fact.

21. The duty of the prosecution to disclose may not depend on the efficiency of defense counsel and this is certainly applicable in the instant cause where the United States Attorney and his associates were in sole possession of many of the papers so sedulously kept from defense counsel.

22. The material nature of the perjured testimony and the prosecutions's reliance thereon are evidenced by the misleading statements included in the prosecution's summation purporting to demonstrate an element of corroboration to the testimony of both HEDGES and BOURBONNAIS. Mr. Leisure's summation was highly prejudicial to the affiant and should be recognized by this Court as

MOTION TO VACATE SENTENCE

error requiring reversal of the conviction obtained through its use. Mr. Leisure told the jury that HEDGES' testimony that he was approached by CAHILL in 1957 to make a trip to California to meet BOURBONNAIS testified that he did not transfer to California until 1959. The testimony of one can hardly be held to corroborate that of the other in any respect.

23. The trial of the affiant was the third in federal courts arising out of the same set of facts. It was also the only instance in which materially different testimony was offered on the issue vital to the finding of a single continuous conspiracy, namely, the termination date of ASPELUND'S dealings in the alleged conspiracy with either JOSEPH CAHILL or CHARLES HEDGES.

24. The documentary evidence offered in support of the grounds set forth in this motion are records of firms which compile them in the ordinary course of business. The petitioner will subpoena the witnesses of said documents.

25. The admission of testimony by CHARLES BOURBONNAIS relating to narcotic evidence consigned to be delivered to JOSEPH SAX, a man not named in the indictment for which the petitioner was tried and who was found innocent of the charges predicated on said evidence, was prejudicial error. (United States v. Sax-Massa, D.C.S.D.N.Y., 1964)/

26. The Court should take judicial notice of the following:

(1) That BOURBONNAIS was unable to identify HEDGES for four years.

(2) That BOURBONNAIS had no recollection of the transaction with HEDGES for four years nor did he relate to any agent of the government his receipt and disposition of the deliveries from GILBERT COSCIA that constituted the narcotics he allegedly gave

MOTION TO VACATE SENTENCE

to HEDGES.

(3) That BOURBONNAIS had the same difficulty identifying JOSEPH or SAX from 1960 to 1963.

(4) That the one hundred thousand dollars (\$100,000.00) sum BOURBONNAIS alleges he received from HEDGES was the largest single cash transaction the record shows him to have ever been involved in.

(5) That BOURBONNAIS' testimony in regard to the meeting with HEDGES was in diametric opposition to the prior fact relation he gave at the Cianchetti trial. (United States v. Cianchetti, infra.)

WHEREFORE, for the good, just, and sufficient cause set forth hereinabove, petitioner prays as follows:

1. That an ORDER issue for an evidentiary hearing in this matter, there being sufficient substantial issues of fact raised herein.

2. That an ORDER be issued directing the United States Marshall to produce petitioner at all hearings held by this Court.

3. That after a hearing on the merits, an ORDER be issued directing that the petitioner's conviction be set aside and that he be discharged from further custody or, in the alternative setting aside the judgment and granting the defendant a new trial.

4. For such other and further relief as law and justice may require.

DOMINICK ROMANO

Sworn to before me this

day of

1974.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOMINICK ROMANO,

Petitioner

-against

UNITED STATES OF AMERICA,

Respondent

GOVERNMENT'S AFFIDAVIT
IN OPPOSITION

74 Civ. 943

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss:
SOUTHERN DISTRICT OF NEW YORK)

DANIEL J. BELLER, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, attorney for United States of America, and as such I am in charge of and fully familiar with this matter, and I make and submit this affidavit in opposition to the petitioner's second motion, pursuant to Title 28, United States Code, Section 2255, for an order vacating his sentence and conviction or for an evidentiary hearing.

2. Indictment 64 Cr. 828, filed September 30, 1964, charged petitioner, Dominick Romano, and eleven other defendants, together with sixteen named co-conspirators in a single count with conspiracy to violate Federal Narcotics Laws, 21 U.S.C. §§ 173 and 174.

3. Petitioner, his brother Arnold Romano, Frank Sherbicki and Carmine Guanti were fugitives at the first trial under the indictment, which commenced on May 3, 1965, before the Honorable Dudley B. Bonsal and a jury.

AFFIDAVIT IN OPPOSITION

Subsequent to the conclusion of trial defendants Sherbicki, Guanti, Arnold Romano and petitioner, Dominick Romano were apprehended. Their trial commenced before the Honorable Lloyd F. MacMahon and a jury on March 3, 1969, and concluded on March 14, 1969, with a verdict of guilty as to each of the four defendants. On April 15, 1969 Judge MacMahon sentenced petitioner to 20 years imprisonment and a \$5,000.00 fine.

4. Petitioner's conviction was affirmed by a unanimous panel of the Court of Appeals in United States v. Guanti, 421 F 2d 792 (2d Cir.), cert. denied 400 U.S. 832 (1970).

5. On June 18, 1971, petitioner moved pro se, pursuant to 28 U.S.C. §2255, for an order vacating his conviction and sentence. That petition, as subsequently amended by retained counsel, was denied in all respects, without a hearing, in a memorandum opinion, MacMahon, J., entered on January 5, 1972. The decision was affirmed by a unanimous court, Romano v. United States, 460 F.2d 1198 (2d Cir.) cert. denied, 409 U.S. 915 (1972).

6. A full statement of facts germane to this petition may be found in the opinion of the United States Court of Appeals in United States v. Guanti, supra, 421 F.2d at 794-795, 798-799, and in the Government's brief on that appeal, at pp.3-22 (Docket Nos. 33632-33635). The evidence at trial showed that petitioner participated in a single conspiracy from 1956-1960 to import enormous quantities of heroin from France and to distribute narcotics after importation.

7. The present motion, like its forerunner, charges serious misconduct on the part of Government witnesses, Government attorneys, and Government agents, including allegations of perjury, subornation

AFFIDAVIT IN OPPOSITION

of perjury, and wilful suppression of material evidence. Little, if any, effort is made to substantiate the charges advanced. Petitioner openly concedes that "this motion constitute[s] a resubmission of the issues presented in petitioner's prior motion to vacate sentence." (Affidavit in Support of Motion to Vacate Sentence), and offers no explanation why the issues presented in this motion were raised neither on appeal from petitioner's conviction nor litigated in the previous proceeding under 28 U.S.C. §2255. In any event, the claims raised are frivolous and without merit.

8. Romano's present petition urges three principal grounds for relief: perjury on the part of Government witnesses, deliberate suppression by the Government at trial of evidence favorable to the petitioner and Government subornation of perjury.

9. This Court, however, has previously considered and rejected petitioner's claim for relief on the identical issues, See Memorandum Opinion, MacMahon J., 71 Civ. 2851, filed January 5, 1972, at 7-12 (perjury and subornation of perjury); and 16-18 (Government's deliberate suppression of material favorable to the defendant). Accordingly, the petition should be denied without a hearing as a "second or successive motion," 28 U.S.C. §2255.

10. Petitioner charges the Government with the knowing use of perjured evidence with respect to the testimony of Clarence Aspelund, a seaman, who acted as a narcotics courier for the conspiratorial enterprise. According to petitioner Aspelund testified at trial that his last delivery of drugs--to Cahill and Hedges--occurred "close to the end of 1959," "close to Christmas," whereas at a previous trial, United States v. Chianchetti, (U.S.D.C. Conn., 1961, Crim # 10,250), Aspelund testified that this delivery occurred

AFFIDAVIT IN OPPOSITION

sometime in Spetember, 1959. The alleged perjury is said to be material because the cut-off date for purposes of the statute of Limitations in petitioner's trial was September 30, 1959. It is alleged that the Government "deliberately withheld physical and other evidence which would have aided the defense in uncovering Aspelund's perjury," specifically referring to Aspelund's Union Book and Seaman's Papers, which "were not entered into evidence" (Petitioner's Memorandum of Law, at 17).

11. The claim is wholly without merit. At the Cianchetti trial, in 1961, Aspelund stated that the meeting with Hedges and Cahill occurred sometime in Spetember, 1959; at petitioner's trial, in 1969, he gave substantially the same testimony, stating that the meeting occurred toward the end of the year, around Christmas. Largely because petitioner and other co-defendants were fugitives during the first trial under the indictment, petitioner was not brought to trial until 10 years after the 1959 transaction in question. Aspelund's testimony, coming ten years after the fact, was open to attack on cross-examination like that of any other witness, since the principal impeaching evidence upon which petitioner relies here--the Cianchetti transcript--was, and is, a public document available to petitioner and his counsel at all times.*

12. Moreover, the documents and information which petitioner so casually accuses the Government of suppressing were equally available to petitioner at trial. Aspelund's Seaman's Discharge Papers were marked as Government's Exhibit 37 for identification at petitioner's trial, and used to refresh Aspelund's recollection on at least one occasion, (Tr. 432-33; App. 1-2).** To the extent petitioner believed that the names of the ships on which Aspelund sailed were relevant to his defense, (see Affidavit at 17(c)), he had only

AFFIDAVIT IN OPPOSITION

to look at these documents at trial. Aspelund's Union Dues Book, Government Exhibit 38 for identification was also available at trial and one page was marked into evidence as Government Exhibit 38A (Tr. 443-444; App. 3-4). Government's Exhibit 44, a statement given by Aspelund to Agent Dugan of the Bureau of Narcotics on April 18, 1961, relating in part to the 1959 transaction that so agitates petitioner, was furnished as 3500 material (Tr. 420; App. 5). The Government, far from suppressing evidence, was absolutely forthcoming in its disclosures to the petitioner and met its obligations under Brady, the Jencks Act and the Federal Rules of Criminal Procedure in timely fashion and in good faith. Against this background, petitioner's charges of misconduct contained in his affidavit and supporting memorandum of law are grossly irresponsible.

13. Contrary to petitioner's assertion, the date of the Aspelund - Hedges- Cahill meeting had no bearing on the statute of limitations issue. The indictment in this case was filed on September 30, 1964. The Government was required to prove, therefore, that at least one overt act had been committed in furtherance of the conspiracy within the five-year period of limitations ranging from September 30, 1959 to September 30, 1964. Although eleven overt acts were charged in the indictment, only the final two related to post-September 30, 1959 acts. Accordingly, the trial judge struck acts 1-9 and charged the jury, with respect to the overt act requirement, that it could not convict any of the defendants unless it found there had been "the commission by any conspirator of either overt act 10 or 11 set forth in the indictment" (Tr. 1143; App. 6). Later in its charge, the Court, instructed the jury to "consider whether the Government has established beyond a reasonable doubt

AFFIDAVIT IN OPPOSITION

the third element of the crime [of conspiracy] and determine whether at least one of the overt acts, 10 or 11, as charged in the indictment was committed by at least one of the conspirators which advanced the object of this conspiract" (Tr. 1180; App.7).

14. Both of the overt acts submitted to the jury involved events occurring in 1960 which were not raised in Aspelund's testimony. Thus Aspelund's trial testimony with respect to the 1959 transaction could have had no effect on the ultimate resolution of the statute of limitations issue. Since the jury found that at least one of the post-September 30, 1959 overt acts charged in the indictment had been committed, testimony with respect to other conspiratorial activities, including Aspelund's testimony concerning the final meeting with Cahill and Hedqes, was clearly admissible to prove the existence of a single, ongoing conspiracy commencing in 1956.

15. Petitioner also claims that testimony of Charles Bourbonnais that he was employed as a purser for Trans World Airlines, flying from San Francisco to Paris in 1959, was perjurious (Affidavit 16(b)). The charge is based upon nothing more than speculation and such bald and conclusory allegations on the part of a counseled petitioner do not raise issues which require an evidentiary hearing see United States v. Branch, 261 F.2d 530 (2d Cir. 1958), cert.denied, 359 U.S. 993, (1959); CF. Burris v. United States, 430 F.2d 399, 402 (7th Cir. 1970), cert. denied, 401 U.S. 921, (1971). Petitioner also accuses the Government of suppressing Bourbonnais' TWA employment record (Affidavit 17(b)). On information and belief that the Government never had such records in its possession, and petitioner has not provided any trace of evidence to the

AFFIDAVIT IN OPPOSITION

contrary. Moreover, Bourbonnais' employment record could easily have been subpoenaed by the defendant at trial.*** Petitioner's charges of perjury concernin g those portions of Charles Hedges' testimony which corroborated allegedly perjured testimony of Bourbonnais (Affidavit 17(c)), are similarly speculative and unsupported.

WHEREFORE, on the facts cited in this affidavit and on the basis of the argument set forth in the Government's Memorandum of Law, previously filed, the Governemnt respectfully requests that Petitioner's motion be in all respects, denied.

DANIEL J. BELLER
Assistant United States Attorney

Sworn to before me this
day of ,1974.

* As this Court said in its Memorandum Opinion, at 16-17, in petitioner's previous \$2255 motion:

The Government has no duty under Brady[v,Maryland, 373U.S. 83 (1963)] to turn over contradictory statements of a witness made at a prior trial when the records of that trial are public. Brady deals with the suppression by the prosecution of evidence favorable to the accused, and it is clearly inapplicable here because the prosecution could not and did not suppress the transcript of the [prior] trial.

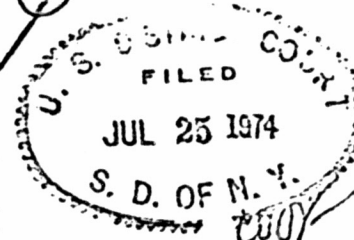
** "Tr." refers to original trial transcript; "App." refers to appendix attached to the Government's Memorandum of Law.

*** Romano and his trial counsel had more than adequate notice of Bourbonnais' testimony concerning his flight route since Bourbonnais gave similar testimony in a previous trial, see United States v. Amone, S.D.N.Y. 64 Cr. 828(Tr.2149-2150; App.8-9).

Decision

B (GP)

Dominick Romano v. United States



ENDORSEMENT
74 Civ. 943-LFM

The facts resulting in petitioner's conviction for violation of 21 U.S.C. §§ 173 and 174 are fully set forth in United States v. Guanti, 421 F.2d 792 (2d Cir.), cert. denied, 400 U.S. 832 (1970), and in the government's brief on that appeal. Familiarity with the facts will therefore be assumed.


The instant petition for post-conviction relief under 28 U.S.C. § 2255 urges three grounds: (1) perjury by government witnesses; (2) deliberate suppression of exculpatory evidence by the government and (3) the government's subornation of perjury. An earlier petition for post-conviction relief, based upon the same grounds now asserted, was considered and rejected by this court in an opinion in 71 Civ. 2851, filed January 5, 1972. The instant petition is therefore dismissed as a successive petition within the meaning of 28 U.S.C. § 2255. Sanders v. United States, 373 U.S. 1, 9 (1963).

Moreover, it clearly appears from the files and records in this case, which are accurately summarized in the opposing affidavit of Daniel J. Beller, Assistant United States Attorney, sworn to July 17, 1974, which summary we hereby adopt as our own findings, that petitioner's present claims are frivolous and without merit and that he is entitled to no relief.

Accordingly, the within petition is dismissed without a hearing.

So ordered.

Dated: New York, N. Y.
July 25, 1974


LLOYD F. MacMAHON
United States District Judge

MEMORANDUM OPINION OF MACMAHON, D.J.

SAME TITLE

Petitioner Dominick Romano was one of four defendants convicted by a jury after a two-week trial of conspiracy to import and distribute huge amounts of heroin into the United States from France, in violation of the federal narcotics law. The judgments were affirmed on appeal. United States v. Guanti, 421 F. 2d 792 (2d Cir.), cert. denied, 400 U.S. 832 (1970). Petitioner's trial was the second to arise from a single indictment filed in 1964 because petitioner and his three co-defendants were fugitives at the time of the first trial (hereinafter "Armone trial"). See United States v. Armone, 363 F. 2d 385 (2d Cir.), cert. denied, 385 U.S. 957 (1966).

Petitioner now moves for post-conviction relief, pursuant to 28 U.S.C. § 2255, for an evidentiary hearing, for an order vacating a judgment of conviction and sentence imposed upon him on April 15, 1969, and for disqualification of the trial judge from hearing and determining these proceedings for bias and prejudice. We deny the petition in all respects.

Petitioner's application, originally submitted pro se but later amended by retained counsel, is not a model of clarity.

MEMORANDUM OPINION OF MAC MAHON, D.J.

It contains twenty-eight pages of bald conclusions, unsupported allegations, rank speculation, material misstatements of the record and rambling dissertations on the law. The application purports to list twelve separate violations of petitioner's constitutional rights, but after careful scrutiny we find many of them repetitious.

We shall first consider whether petitioner is entitled to a hearing.

We are required to hold " 'a prompt hearing' when the allegations of deprivation of constitutional rights raise disputed issues of fact in order to 'determine the issues and make findings of fact and conclusions of law' with respect to them 'unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.' 28 U.S.C. § 2255" United States v. Malcolm, 432 F. 2d 809, 812 (2d Cir. 1970), and cases cited therein.

Evidentiary hearings are not required, however, on nonconstitutional claims, nor on constitutional claims which have been adversely decided by a trial or appellate court. Kaufman v. United States, 394 U.S. 217, 227 n. 3 (1969). Constitutional claims, despite previous consideration or previous opportunity for consideration, do require an evidentiary hearing "(1) where a federal trial or appellate court said nothing

MEMORANDUM OPINION OF MAC MAHON, D.J.

because the issue was not raised; (2) where it was unclear whether the 'say' was on the merits; (3) where new law had been made or facts uncovered relating to the constitutional claim since the trial and appeal; and (4) where the trial or appellate court based its rulings on findings of fact made after a hearing that was not full and fair." Kapatos v. United States, 432 F. 2d 110, 113 (2d Cir. 1970), cert. denied, 401 U.S. 909 (1971); Sanders v. United States, 373 U.S. 1 (1963). Keeping these principles in mind, we now turn to petitioner's claims.

IMPERMISSIBLE SUGGESTIVE IDENTIFICATION
OF CHARLES HEDGES BY CHARLES BOURBONNAIS

Charles Hedges and Charles Bourbonnais were government witnesses at both the Armone trial and petitioner's trial, and both were involved in the conspiracy of which petitioner was convicted. Petitioner contends that Bourbonnais' in-court identification of a picture of Hedges was tainted by an impermissibly suggestive pre-trial identification, in violation of his constitutional rights, as set forth in United States v. Wade, 388 US 218 (1967), Gilbert v. California, 388 US 263 (1967), and Stovall v. Denoo, 388 US 293 (1967).

MEMORANDUM OPINION OF MAC MAHON, D.J.

Specifically, petitioner claims the impermissive suggestion occurred when the prosecution brought Bourbonnais and Hedges together in a face-to-face confrontation prior to trial in the office of Assistant United States Attorney William Tendy. Petitioner further contends that without this "one on one" process of confrontation, Bourbonnais would have had no independent source by which to identify Hedges. In support of this contention, petitioner points to Bourbonnais' testimony at the Armone trial regarding the meeting in Mr. Tendy's office:

Bourbonnais

"A. I did not recognize Mr. Hedges at that particular time. He himself said hello and recited the incident and the circumstances under which we met previously.

* * *

Mr. Kasanof

"Q. It wasn't until Mr. Hedges said something to you that you recognized him?

BOURBONNAIS

"A. I did not recognize him, sir. I recognized the incident of our previous meeting at the time he met me on 55th Street and First Avenue." (Armone Tr. 2438-2439)

No constitutional right of petitioner was violated by the meeting of Bourbonnais and Hedges in Mr. Tendy's office. The Wade, Gilbert and Stovall trilogy are inapplicable. These and other cases upon which petitioner relies deal with pre-trial confrontations of an accused for identification, absent

1

MEMORANDUM OPINION OF MAC MAHON, D.J.

counsel, by a prospective government witness. In those cases, the court held that a post-indictment lineup was a critical stage of the prosecution at which a defendant was entitled to the assistance of counsel. United States v. Wade, supra, 388 U.S. at 237.

Here, the pre-trial confrontation was between prospective government witnesses and not, as in the cases cited by petitioner, between an accused and a prospective government witness. Petitioner was not present at the meeting in Mr. Tendy's office, and it would be an absurdity for us to hold that petitioner's right to counsel extends to the government's interviewing of witnesses in the preparation of its case.

Moreover, the Armone transcript reveals that Bourbonnais was hesitant in identifying Hedges because they had only met twice before and because Bourbonnais was of the opinion that Hedges played a small part in the conspiracy. (Armone Tr. 2433-2434; 2606-2607.)

Accordingly, we conclude that petitioner's claim of denial of a constitutional right because of a tainted in-court identification is without merit.

PROSECUTION'S DELIBERATE
SUBORNATION OF PERJURY

Petitioner's contentions numbered I, II, VI, IX, X.

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and XII all concern his allegation that the prosecution suborned perjury. He alleges in I, II and VI that the prosecution's subornation of perjury improperly and illegally influenced both the grand jury to indict him and the petit jury to convict him. He further alleges in IX and X that false statements by the prosecution denied him a full and fair review of his case both on appeal and on his petition for certiorari. Finally, he contends in XII that the government's grant of immunity from prosecution to Hedges and Bourbonnais and its promise to reduce their sentences is a process so likely to produce perjury that it violates due process of law.

It would be a gross understatement to say petitioner's application lacks specificity in support of these allegations. Sprinkled here and there throughout his twenty-eight page application are clues to the alleged perjury, although he never identifies one perjurious statement. Petitioner does, however, state that the testimony of both Charles Hedges and Charles Bourbonnais was perjurious.

Considering Hedges' testimony first, petitioner makes the broad conclusory statement that Hedges' testimony was given to "create as impressive a picture of prosecution potential as he could for the sole purpose of enhancing the possibility of earning his freedom as a reward for the combi-

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nation of fact and perjurous (sic) fantasy his testimony represented." Nowhere, however, does petitioner cite a single perjurous statement made by Hedges; nor does he even cite any testimony given by Hedges. Such unsupported conclusory allegations and speculation do not raise issued which would require an evidentiary hearing, nor the ultimate relief petitioner seeks. Cf. Burris v. United States, 403 F. 2d 399, 402 (7th Cir. 1970), cert. denied, 401 U.S. 921 (1971).

Turning to Bourbonnais' alleged perjury, petitioner contends that Hedges, at the identification confrontation with Bourbonnais in Mr. Tendy's office, was allowed by the prosecution to recite events to Bourbonnais which never occurred and that this recital became Bourbonnais' entire testimony. He further contends that such an identification procedure by the government could "accurately (be) categorized as deliberate subornation of perjury." These contentions are patently frivolous.

The vast majority of Bourbonnais' direct testimony described the procedure he followed as a courier in bringing narcotics into the United States and the various contacts he had here and abroad. Approximately seven pages of direct testimony out of a total of seventy-four pages concerned Hedges. The record is perfectly clear that Bourbonnais had only minimal

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contact with Hedges and that it was necessary for Hedges to refresh Bourbonnais' memory of their previous meetings. This is borne out by the cross and redirect examinations of Bourbonnais at the Armone trial:

Cross

Bourbonnais

"A. Mr. Hedges' picture was shown to me on several occasions and I could never identify him for the simple reason that he was just a small part in this transaction, and he had complete --" (Armone Tr. 2433-2434.) (Emphasis added.)

Redirect

Mr. Morvillo

"Q. Do you remember on cross-examination Mr. Kasanof asked you about a meeting that took place in Mr. Tendy's office with Mr. Hedges?

Bourbonnais

"A. Yes, Sir.

Mr. Morvillo

"Q. Would you tell the court and jury what happened during that meeting?

Bourbonnais

"A. I would be glad to. On this particular meeting I was asked to come down to Mr. Tendy's office to identify a man. In the room at the time I believe Mr. Tendy was present, Mr. Hedges, which I know now is Mr. Hedges, myself and one or two other men. I don't recall.

Mr. Tendy turned to me and asked me if I knew this particular man, referring to Mr. Hedges. I told him that I did not know him. He asked me to be sure, to take another look. I looked for a few moments and again I assured Mr. Tendy that I did not know him at all.

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Finally, Mr. Hedges came up to me and said 'Charlie don't you remember me'?

I said "No, I do not."

He said 'I am the fellow that came up to your car that day and you gave the two suitcases.' He described how he was dressed and then upon this description of that, I recollected the incident.

Mr. Morvillo

"Q. Was that the first time that you remembered Mr. Hedges?

Bourbonnais

"A. Yes, that was the first time, although I would never have recognized him at the time but, as I said, when he told me what transpired between he and I, I remembered definitely the meetings that had taken place between he and I. There were only two." (Armone Tr. 2606-2607.)

Petitioner's allegations that Hedges recited Bourbonnais' entire testimony is, therefore, at variance with the record and completely lacking in merit.

Additionally, petitioner's allegation that the testimony of Hedges and Bourbonnais was perjurious because of government promises is without merit, as petitioner has failed to demonstrate any perjurious testimony.

Accordingly, we find petitioner's allegation that the government suborned perjury to be without merit.

MEMORANDUM OPINION OF MAC MAHON, D.J.

DENIAL OF ADEQUATE ASSISTANCE
OF TRIAL COUNSEL

Petitioner alleges that he was denied adequate assistance of counsel because his attorney, James M. LaRossa, ineffectively cross-examined Charles Bourbonnais. In support of this contention, petitioner points to the fact that at the Armone trial three defense lawyers cross-examined Bourbonnais for a total of 412 pages of trial transcript, whereas at his trial, Mr. LaRossa's and Mr. Hanrahan's cross-examination of Bourbonnais totalled only 49 pages of trial transcript.

Petitioner also contends that Mr. LaRossa stated on the record that he was unprepared to proceed with the cross-examination of Bourbonnais. This allegation is patently frivolous. Nowhere in the record is there evidence that Mr. LaRossa was unprepared to cross-examine Bourbonnais and petitioner's assertion that Mr. LaRossa stated so is, therefore, a material misstatement of the record.

Petitioner's bald contention that the mere length of a cross-examination is somehow related to the quality of the cross-examination is sheer nonsense. Verbosity and lengthy cross-examinations are the hallmarks of incompetence, not of effective advocacy. Also, petitioner has failed to specify how the cross-examination was ineffective, except for

MEMORANDUM OPINION OF MAC MA

its alleged brevity. That was obviously a tactical decision and, in our opinion, wise in the circumstances. Petitioner had the good fortune to be represented by one of the most experienced and competent members of the criminal bar of the City of New York and his performance in petitioner's behalf was in the highest tradition of the bar.

Accordingly, we conclude that petitioner's claim of denial of effective assistance of counsel is totally without merit.

DENIAL OF RIGHT TO CALL WITNESSES
IN HIS OWN BEHALF

Petitioner contends that he was denied his right to call witnesses in his own behalf because the prosecution had him tried jointly with his brother, thereby making it morally impossible for him to testify without prejudicing the cause of his brother.

It is axiomatic that persons jointly charged in a conspiracy should be tried together unless it is shown that a defendant will be substantially prejudiced by a joint trial. Rule 14, Fed.R.Crim.P., United States v. Bentvena, 319 F.2d 916 (2d Cir.), cert. denied sub nom. Ormento v. United States, 375 U.S. 940 (1963); United States v. Burgio, 279 F. Supp. 843 (S.D.N.Y. 1968). Petitioner's alleged moral obligation

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to his brother does not substantially prejudice his case and, therefore, would not be ground for a separate trial.

Accordingly, we conclude that petitioner's alleged denial of his right to call witnesses and to testify in his own behalf is without merit.

PROSECUTION'S DELIBERATE WITHHOLDING
OF EXCULPATORY MATERIAL

Petitioner claims that the prosecution suppressed exculpatory evidence which it was obligated to turn over to the defense in accordance with Brady v. Maryland, 373 U.S. 83 (1963).

In vague terms, petitioner contends that the government failed to turn over contradictory statements of Charles Bourbonnais given under oath, although petitioner does not identify when or where these statements were made. Petitioner does, however, make reference to alleged inconsistent statements of Bourbonnais given at the Armone trial.

The government has no duty under Brady to turn over contradictory statements of a witness made at a prior trial when the records of that trial are public. Brady deals with the suppression by the prosecution of evidence favorable to the accused, and it is clearly inapplicable here because the prosecution could not and did not suppress the transcript of the Armone trial.

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MEMORANDUM OPINION OF MAC MAHON, D.J.

Petitioner further contends that the government also violated Brady in failing to turn over the results of a lie detector test taken by Bourbonnais. This contention is another palpable misstatement of the record, since the government did turn over the results of the lie detector test when it gave defense counsel 3500 material before Bourbonnais testified. See Government Exhibit 75 and Trial Transcript, p. 487 ("Tr. ____").

Finally, we find no merit in petitioner's additional claims in his "Amendment to Motion to Vacate Sentence" that the government failed to turn over as 3500 material the grand jury testimony of Hedges and Bourbonnais. The record is clear that Hedges' grand jury testimony (Government Exhibit 31), and Bourbonnais' grand jury testimony (Government Exhibits 82, 83, 84 and 87) were turned over to defense counsel for inspection. (Tr. 2, 487 and 559.)

Accordingly, we conclude that petitioner's Brady contention is without merit.

PREJUDICIAL CHARGE TO THE JURY

Petitioner claims that the court's charge was "patently erroneous as a statement of law" because it contained an instruction whereby the jury had to find all defendants guilty or all defendants not guilty. On the contrary,

MEMORANDUM OPINION OF MAC MAHON, D.J.

the court specifically charged that:

"The guilt or innocence of each defendant must be determined by you separately. In other words, under our law, there is no such thing as guilt by mere association. Each defendant has the right to the same kind of consideration on your part as you would give him if he were being tried alone." (Tr. 1141-42)

This claim, furthermore, was squarely raised, considered and rejected on direct appeal and, therefore, will not be considered here. United States v. Guanti, supra, 421 F.2d at 798; Castellana v. United States, 378 F.2d 231, 233, (2d Cir. 1967).

Moreover, the court's charge is not reviewable by way of collateral attack under 28 U.S.C. § 2255. Banks v. United States, 287 F.2d 374 (7th Cir.), cert. denied, 366 U.S. 939 (1961).

Thus, this claim is also without merit.

CONSPIRACY PROVISION OF 21 U.S.C. § 174
IS UNCONSTITUTIONAL

Petitioner claims that the conspiracy provision of 21 U.S.C. § 174, under which he was convicted, is unconstitutional.

The short answer to this claim is that federal conspiracy statutes have consistently been held to be constitu-

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tional. Clune v. United States, 159 U.S. 590, 595 (1895); Callan v. Wilson, 127 US 540, 555-556 (1888); See Dennis v. United States, 341 U.S. 494, 511 (1951); Pinkerton v. United States, 328 U.S. 640, 643 (1946).

Accordingly, this claim is without merit.

Finally, petitioner requests that he be allowed to take a lie detector test. Nothing could be gained by such a test and, therefore, this request is in all respects denied.

MOTION TO DISQUALIFY

The ground urged by petitioner as a basis for disqualification is that the trial judge "has obtained in this case a bias against myself and my codefendants, so strong as to affect his objectivity in assessing the claims made in my pending Motion to Vacate Sentence." Though not explicitly stated, this phase of the petition is apparently premised on 28 U.S.C. § 144. That statute provides:

"Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

MEMORANDUM OPINION OF MAC MAHON, D.J.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that is is made in good faith."

The moving papers are utterly devoid of any facts showing personal bias or prejudice against petitioner on the part of the trial judge. The statute and the decisions under it make clear that it must appear from the facts presented in the petition that the bias is personal in nature, that is, an attitude of extrajudicial origin as opposed to one acquired during the course of judicial proceedings. United States v. Grinnell Corp., 384 US 563, 583 (1966); Wolfson v. Palmieri, 396 F.2d 121, 124 (2d Cir. 1968); Rosen v. Sugarman, 357 F.2d 794, 797-798 (2d Cir. 1966); Foster v. Medina, 170 F.2d 632 (2d Cir.), cert. denied, 335 US 909 (1949); Ormento v. United States, 328 F. Supp. 246, 260 (S.D.N.Y.), aff'd without opinion, Docket No. 71 Cr. 1628 (2d Cir., Oct. 26, 1971); Mirra v. United States, 379 F. 2d 782, 787-788 (2d Cir.), cert. denied, 389 US 1022 (1967).

This application, therefore, is insufficient on its face in that, at most, it seizes upon a few isolated instances out of context occurring during the course of a two-week trial, which petitioner interprets as manifestations of the court's

MEMORANDUM OPINION OF MAC MAHON, D.J.

bias against him. Most of these consist of nothing more than the court's overruling objections or denying motions by his counsel or other defense attorneys, which petitioner claims were erroneous. Patently, petitioner's bald conclusions of bias are legally insufficient.

For example, petitioner claims that the court erroneously permitted Hedges, a co-conspirator, to relate statements made by codefendants Pacelli and Ricucci during the course of the conspiracy which tended to inculcate the petitioner. There was no objection to this testimony, quite obviously, because it is hornbook law that statements of co-conspirators, in furtherance of the conspiracy, are admissible against all conspirators.

Again, as further evidence of the trial judge's bias, petitioner points to the judge's refusal to accept requests to to charge from his counsel, after all counsel had concluded their summations and five minutes before the court charged the jury. Surely, our ruling was not only reasonable and justified but fully supported by Rule 30, Fed.R.Crim.P., which requires the submission of requests to charge at the close of the evidence and not after summations by counsel, a few minutes before the charge, as was the case here. Moreover, petitioner's counsel was given, and availed himself of, a

MEMORANDUM OPINION OF MAC MAHON, D.J.

full opportunity to take exception to the court's charge.

Petitioner's other allegations of bias are equally frivolous. In short, he utterly fails to show "a bent of mind (on the part of the trial judge) that might prevent or impede impartiality of judgment" in the present proceedings. Berger v. United States, 255 US 22, 33-34 (1921).

Finally, 28 U.S.C. § 144 requires, among other things, that an affidavit of bias and prejudice "shall be accompanied by a certificate of counsel of record stating that it is made in good faith."

Counsel of record for petitioner upon the trial of this case was James M. LaRossa, and upon the appeal David B. Isbell and James M. LaRossa. Neither has filed a certificate of good faith on behalf of petitioner. Nor, indeed, has petitioner's present counsel, Henry B. Rothblatt, a member of the bar of this court, retained by him to file the amended petition which added the charge of bias on the part of the trial judge.

The requirement of such a certificate is not a mere technicality but one of the essential requirements of the statute. Ormento v. United States, *supra*, 328 F. Supp. at 260-261. Although this is a significant defect in the instant motion to disqualify, we do not rely on it in disposing of the motion.

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Neither the petition nor amended petition shows any factual basis for the claim of bias and prejudice. We have never held any personal bias or prejudice, nor acted as a result of any bias or prejudice, against this petitioner nor any defendant in this case. Nor have we held any bias or prejudice, nor acted as a result of any bias or prejudice, in favor of the prosecution. Each and every action of the court is a matter of record. All of our rulings were objective, impersonal, based on the evidence and incidents happening during the trial, and to the best of our ability were made in accordance with the law, regardless of the party or parties affected.

Accordingly, petitioner's motion to vacate the judgment of conviction and sentence heretofore imposed upon him, for a hearing, and to disqualify the trial judge from considering this application for post-conviction relief is in all respects denied.

So ordered.

Dated: New York, N.Y.
January 5, 1972

/S/ LLOYD P. MacMAHON
United States District Judge

DECISION OF COURT OF APPEALS ON FIRST PETITION

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 761 September Term, 1971

(Argued May 9, 1972.

Decided May 30, 1972

Docket No. 72-1107

DOMINICK ROMANO,

Petitioner-Appellant

-against

UNITED STATES OF AMERICA,

Respondent-Appellee.

BEFORE: FRIENDLY, Chief Judge

MOORE AND ANDERSON, Circuit Judges

Appeal from an order of the District Court for the Southern District of New York, Lloyd F. MacMahon, District Judge denying without a hearing a motion to vacate a judgment of conviction pursuant to 28 U.S.C. §2255 and denying a motion that the District Judge disqualify himself pursuant to 28 U.S.C. §144.
Affirmed. _____

Henry B. Rothblatt, New York, N.Y.,
(Rothblatt, Rothblatt, Seijas &
Peskin, New York, N.Y., on the
brief), for Appellant.

Judge C. Sabetta, Assistant United
States Attorney, New York, N.Y.
(Whitney North Seymour, Jr., United
States Attorney for the Southern
District of New York, N.Y. and Peter
F. Rient, Assistant United States
Attorney, New York, N.Y. of counsel),
for Appellee.

DECISION OF COURT OF APPEALS ON FIRST PETITION

PER CURIAM:

Dominick Romano appeals from an order denying without a hearing his motion to vacate a judgment of conviction pursuant to 28 U.S.C. §2255 and denying his motion that the District Judge disqualify himself from determining the motion for post-conviction relief pursuant to 28 U.S.C. §144. Finding no error, we affirm.

Appellant is presently serving a 20-year sentence which was imposed after he was found guilty of having conspired to violate the Federal Narcotics Laws, 21 U.S.C. §173,174. The judgment of conviction was affirmed by this court in United States v. Guanti, 421 F.2d 792 (2d Cir.), cert. denied, 400 U.S. 832 (1970). For a statement of facts in this case see the opinion in Guanti, supra.

In the papers submitted in support of his motion to vacate his judgment of conviction, appellant alleges that the prosecution knowingly used perjurious testimony at his trial. This claim is without merit. No evidence of perjury is noted and no false testimony is cited. The fact that a prosecution witness may have a criminal record is not a sufficient basis for vacating a judgment of conviction when the witness' criminal record was known at the time of trial. Similarly, the mere assertion that a witness might have had a motive to lie, when unsupported by any fact, does not entitle a petitioner to a hearing on the alleged use of perjurious testimony.

Also without merit is the claim of prejudice emanating from an allegedly improper in-court photographic identification of one prosecution witness by another. According to the appellant, the in-court identification was tainted by an impermissibly sugg-

DECISION OF COURT OF APPEALS ON FIRST PETITION

estive pre-trial confrontation between the two witnesses. The appellant argues that this confrontation was in violation of his constitutional rights as enumerated in United States v. Wade 388 U.S. 218 (1967), Gilbert v. California, 388 U.S. 263 (1967) and Stovall v. Denno, 388 U.S. 293 (1967).

None of the appellant's constitutional rights were violated when these two witnesses met an an interview before trial. Appellant's right to counsel does not extend to the government's interviewing of witnesses in preparation of its case when the appellant was not even present at this meeting.

Appellant's third claim that he was deprived of the effective assistance of counsel was rejected by this court in an earlier appeal. Guanti, supra at 799. As no additional facts are cited in support of the claim, it can be dismissed as being without merit.

The remaining contentions, that the District Judge should have disqualified himself from determining this motion and that appellant's right to testify in his own behalf was frustrated because the trial court denied his motion to sever his trial from that of his brother, are without any merit.

The order of the District Court is therefore affirmed.

INDICTMENT

(Document No. 1)

The Grand Jury charges:

1. From in or about March, 1956 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, ALFRED ARMONE, JOSEPH ARMONE, JOSEPH CAHILL, STEPHEN GRAMMAUTA, CARMINE GUANTI, VINCENT PACELLI, MICHAEL RICUCCI, ARNOLD ROMANO, DOMINICK ROMANO, ALEXANDER SCHOENFELD, FRANK SHERBICKI, and NICHOLAS VISCARDI, named as defendants herein and Joseph Aranci, Marius Aranci, Georgette Arassus, Steve Armone, Clarence Aspelund, Felix Barnier, Charles Bourbonnais, Nicholas Calamaris, Gilbert Coscia, James Godwin, Charles Hedges, Robert Le Coat, Mauricio Rosal, Georges Roulet, Etienne Tarditti and John Doe, a/k/a Henri-pierre, meaning thereby to describe a white male approximately 35 years of age, six feet tall, 170 pounds, blonde hair, named as co-conspirators but not as defendants herein, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other

INDICTMENT

and with divers other persons to the Grand Jury unknown, to violate Sections 173 and 174 of Title 21, United States Code.

2. It was a part of said conspiracy that said defendants and co-conspirators would unlawfully, wilfully, knowingly and fraudulently import and bring into the United States large amounts of narcotic drugs from and through France, and other countries to the Grand Jury unknown.

3. It was further a part of the said conspiracy that said defendants and co-conspirators would unlawfully, wilfully, and knowingly receive, conceal, buy, sell, and facilitate the transportation, concealment and sale of large amounts of narcotic drugs after said narcotic drugs had been imported and brought into the United States, knowing the said narcotic had been imported and brought into the United States contrary to law.

4. It was further a part of said conspiracy that said defendants and co-conspirators would attempt to conceal the existence of the conspiracy and would take various steps designed to prevent disclosure of their activities.

INDICTMENTOVERT ACTS

1. In pursuance of the said conspiracy and to effect the objects thereof, in or about June of 1958, in the Southern District of New York, the defendant JOSEPH CAHILL met the defendant ALFRED ARMONE, in the vicinity of Fifth Avenue and 49th Street, New York, New York.

2. In further pursuance of the said conspiracy and to effect the objects thereof, in or about June of 1958, in the Southern District of New York, the defendant DOMINICK ROMANO was present in a hotel in the vicinity of Fifth Avenue and 9th Street, New York, New York.

3. In further pursuance of the said conspiracy and to effect the objects thereof, in or about September of 1958, in the Southern District of New York, the defendant ARNOLD ROMANO delivered a package to the defendant, ALEXANDER SCHOENFELD, in the vicinity of Avenue C and 5th Street, New York, New York.

4. In further pursuance of the said conspiracy and to effect the objects thereof, in or about October of 1958,

INDICTMENT

in the Southern District of New York, the defendants VINCENT PACELLI, MICHAEL RICUCCI and ARNOLD ROMANO, were present in the Palm Restaurant, 837 Second Avenue, New York, New York.

5. In further pursuance of the said conspiracy and to effect the objects thereof, in or about October of 1958, in the Southern District of New York, the defendant CARMINE GUANTI received a package in the vicinity of Second Avenue and 17th Street, New York, New York.

6. In further pursuance of the said conspiracy and to effect the objects thereof, in or about October of 1958, in the Southern District of New York, the defendant VINCENT PACELLI gave the defendant ARNOLD ROMANO a sum of money in the vicinity of Lexington Avenue and 34th Street, New York, New York.

7. In further pursuance of the said conspiracy and to effect the objects thereof, in or about February of 1959, in the Southern District of New York, the defendants JOSEPH CAHILL and ARNOLD ROMANO drove in an automobile in

INDICTMENT

the vicinity of Vanderbilt Avenue and 43rd Street, New York, New York.

8. In further pursuance of the said conspiracy and to effect the objects thereof, in or about February of 1959, in the Eastern District of New York, the defendants JOSEPH CAHILL and STEPHEN GRAMMAUTA drove in an automobile in the vicinity of Manhasset, Long Island.

9. In further pursuance of the said conspiracy and to effect the objects thereof, in or about December of 1959, in the Southern District of New York, the defendants STEPHEN GRAMMAUTA and NICHOLAS VISCARDI, drove in an automobile in the vicinity of First Avenue and 26th Street, New York, New York.

10. In further pursuance of the said conspiracy and to effect the objects thereof, in or about March of 1960, in the Southern District of New York, the defendant JOSEPH ARMONE was in the vicinity of 122 Second Avenue, New York, New York.

11. In further pursuance of the said conspiracy and to effect the objects thereof, in or about July of

INDICTMENT

1960, in the Southern District of New York, the defendant FRANK SHERBICKI delivered a package to the vicinity of Second Avenue and 33rd Street, New York, New York.

(Title 21, United States Code, Sections 173 and 174).

s/

FOREMAN

s/Robert M. Morgenthau

ROBERT M. MORGENTHAU

United States Attorney

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1 lhbr 466a Aspelund-direct

[428]

2 to the use of any statements. The witness has not
3 stated that he needs to refresh his recollection at
4 this time.

5 THE COURT: Overruled.

6 Q Mr. Aspelund, does that exhibit
7 refresh your recollection as to when you met
8 Joseph --

9 A I wouldn't say so.

10 MR. FRIEDMAN: If your Honor please,
11 before we get an answer to that question, may
12 we see the exhibit that refreshed the witness'
13 recollection?

14 THE COURT: No. Proceed.

15 Q Mr. Aspelund, have you read
16 Government's Exhibit 174 for identification?
17 Have you read the Exhibit 174 for identification?

18 A Excuse me. Was that the one you just
19 showed me?

20 Q That's correct.

21 A Yes, I did.

22 Q Does that refresh your recollection
23 as to when you met Joseph Cahill in the Phoenix
24 Bar?

25 A I know I meet him, but I cannot

A-44

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TRANSCRIPT OF ROMANO TRIAL

[428a]

1 lhbr 467a Aspelund-direct

2 after this many years state exactly this was the
3 year. I cannot do it. I know I meet him there,

4 '55, '56; that's what your statement say.

5 I cannot swear on it, but if I on that particular
6 time have stated that, it must have been right.

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TRANSCRIPT OF ROMANO TRIAL

116a

6 ebb [49]

Hedges-direct

A With Romano?

Q Did he tell you what he was going to do?

MR. La ROSSA: Objection, your Honor.

THE COURT: Overruled.

What did he say?

THE WITNESS: Yes.

X *Don!* *(circle)*
A He told me that he was going to take over this, you know, he was going to meet these guys in the hotel from now on, you know. He would have taken over this job.

Q Mr. Hedges, I show you Government's Exhibit 6 for identification and ask you if you can identify that exhibit.

A ~~That's Aspelund, Clarence Aspelund.~~

Q Do you recall the occasion when you first met Clarence Aspelund?

A Yes. It was in 1959.

Joe and I rented a suite of rooms at the Vanderbilt Hotel.

The next morning we went out, we left the Vanderbilt Hotel, and we went down to the Amvets Club.

We got back to the hotel about 4 or 5 o'clock in the morning.

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TRANSCRIPT OF ROMANO TRIAL

117a

7 ebbr [50]

Hedges-direct

We went to sleep and the next morning the phone rang, and Joe told me, he said, "Get down there on 34th Street. There's a guy there. He has a pipe and a briefcase, and his name is Clarence."

So I got dressed quickly and rushed down, and he was on 34th Street off Lexington Avenue.

I went down to him and I says, "Clarence?"

He says, "Yes."

And I took him, and I walked him up and down streets and into the side entrance of the Vanderbilt Hotel.

When I passed the corner of Lexington Avenue, there was Ricucci, Romano, and Pacelli standing there.

ot5b

TRANSCRIPT OF ROMANO TRIAL

118a

1 eobr {51}

Hedges-direct

THE COURT: Which Romano?

THE WITNESS: Ally Romano.

Q What happened then?

A Well, I took Clarence Asvelund and walked him around the streets, down to the side entrance of the hotel. I took him into the hotel and we went upstairs and Joe greeted him and asked him did he want anything. They started counting money or something like that and it was short. Joe told me, he says, "Run down to the little guy," he called Ally, "and get me the balance of this."

Q Do you recall how much it was, approximately?

A No, I don't. I don't recall.

I ran down there and Ally walked over to Pacelli and Ricucci and he handed me some money and I took it back to the hotel. This Clarence gave me a car key and he says, my car is in 34th Street off Seventh -- 34th Street and Eighth Avenue, I think, and he says the package is in the back.

I took the package out of the back of the trunk after I got his car and put it in the back of the car and drove to 42nd Street and Third Avenue where I gave it to Guanti.

TRANSCRIPT OF ROMANO TRIAL

120a

3 eobr

[53]

Hedges-direct

Connecticut, but they got lost somewhere and we stopped by a factory --

Q Let me backtrack a moment, Mr. Hedges.

You say you were driving a black Plymouth?

A Yes.

Q Was that --

MR. HANRAHAN: Your Honor, at this time may we request a slight recess here?

THE COURT: All right, we will take a short recess.

(Short recess.)

(In open court; jury present.)

BY MR. LEISURE:

Q Mr. Hedges, before the recess I believe you were testifying about the second time that you saw Clarence Aspelund and you were describing a black Plymouth. Who had you received that black Plymouth from?

A From Pacelli and Ricucci.

Q I believe you were testifying that Cahill and Ally Romano were also with you on the second occasion that you saw Aspelund. Would you describe how they proceeded?

A We drove up there and I followed them.

TRANSCRIPT OF ROMANO TRIAL

123a

lebr [55]

Hedges-direct

Q After the package was placed in the trunk of the Plymouth, what happened?

A Well, we drove down to New York and I dropped it off at 116th Street in the garage.

Q Where was that garage located?

A 116th Street and Pleasant Avenue.

Q And where did you park the car?

A I just left it there.

Q And after you left the car, where did you go?

A Well, I went either to the Amvets Club or to a bar and grill on 23rd Street.

Q On this particular occasion after you got out of the car, where did you walk?

A Well, Alley and Joe waited for me up the street a ways, and I got into the car and we went downtown.

Q After the first time you went to Connecticut, did you go there again?

A Yes, on a few occasions.

Q The next occasion, can you fix the time, approximately, when you went up there?

TRANSCRIPT OF ROMANO TRIAL

124a(1)

ebr-~~56~~]

Hedges-direct

A Sometime in 1959. The latter part of '59, I guess.

Q When was the last time you went to Derby?

A The end of '59. I met Aspelund at Howard Johnson's.

Q That was toward the end of '59?

A No. Wait a minute.

It was, maybe, June of '59, or July of '59, or August. Somewhere in that area.

Q What happened the second time that you went up to Derby?

A The second time?

Q Yes.

A (No response.)

Q About how many times did you go up to Derby?

A About three times, or four times.

Q And do you recall when the first time was that you went up there?

MR. LA ROSSA: I think it's been asked and answered, your Honor.

THE COURT: Overruled.

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TRANSCRIPT OF ROMANO TRIAL

124a

ebr-57

Hedges-direct

A The first time?

Q Yes.

A The first time was -- maybe it was around September of 1959. September of 1959? The first time?

Q The first time that you drove to Derby, Connecticut.

A Oh, I guess it was in '58, the latter part of '58.

Q And the next time that you went to Derby?

A In the beginning of '59, I guess.

Q On these other occasions that you went to Derby, who went with you?

A Joe, Alley Romano and myself.

Q And on every occasion?

A Yes. No. There was one occasion that just Joe and I went up there.

Q Did you testify that you went to a Howard Johnson's on one occasion?

A Yes. That was the last occasion.

Q Do you remember the time of the year?

MR. LA ROSSA: Objection, your

TRANSCRIPT OF ROMANO TRIAL

137a

3 ebbr [70] Hedges-direct

MR. La ROSSA: May I comment, your Honor?

THE COURT: No.

MR. La ROSSA: "The first time."
He said "The first trip to Manhasset."

THE COURT: I heard the question.

MR. La ROSSA: There is no testimony with respect to Manhasset.

MR. LEISURE: I will withdraw the question, your Honor.

THE COURT: No, the question stands. Go ahead and answer. ~~We will be here until the 4th of July.~~

A The first time was in 1959, I believe.

Q What happened on that occasion?

A Well, we went out with the Plymouth and Ally and Joe drove in the Cadillac and Joe went over and met this guy in a light colored car, a Lincoln, I think it was. I sat in the car and he came back and put this package in the back of the trunk of the Plymouth. I drove into East Harlem and dropped the car off again.

Q Where did you drop the car off on that occasion?

138a

4 eobr

[71]

Hedges-direct

A : On 116th Street and Pleasant Avenue.

Q And what location there?

A What location? At the garage at 116th Street.

Q How many times did you make trips out there?

A The best I can recall two or three times, three times.

Q Did Cahill and Arnold Romano go with you on all of those occasions?

A No. On one occasion Steve Grammauta took my car and drove out.

Q Do you recall why that happened?

A Why it happened? I think Ally had an accident or Joe Cahill had an accident with Ally's car.

Q On those three or four other occasions after receiving the package, what would you do?

A I would do the same thing. I would drive into East Harlem, drop the car off at the garage and just go about my business.

Q Would you describe the area you went to out on Long Island?

A All I know it was a lot of stores there.

1 1hr-2 498a Aspelund-direct

[459]

2 impression Joe was holding down on the
3 Merritt Parkway somewhere with the first gas
4 station.

5 Q Where is the gas station located?

6 A On the Merritt Parkway. There is
7 one going into New York and one on the
8 other side coming back.

9 Q Do you recall when the second trip
10 to Connecticut was?

11 A Between April and May.

12 Q What happened on that occasion?

13 A Charlie just picked up whatever I
14 had that time, and everything was all right.

15 Q Was there another occasion when he
16 came up?

17 A He come up later, close to the
18 end of 1959, and on that particular time he
19 was five or \$8,000 short on the payment
20 that he received.

21 Q After that trip, did you meet
22 with Charlie again?

23 A Yes, I did.

24 Q Where did you meet him?

25 A We made arrangement for the payment

A-55

1 lhr-3 499a Aspelund-direct

2 of the money, he was supposed to meet me in
3 New York, downtown Canal Street, where the
4 Sanitation Department have their parking place
5 and pay me the money.

6 Q Did you meet him there?

7 A He was where the agreement was made
8 and he paid me.

9 Q Did he come to Connecticut again?

10 A The following -- the first trip
11 he owed me \$5,000. Now, he come back one more
12 time and this time he was short \$8,000.

13 Q Do you remember what time of year
14 that was?

15 A That was close to Christmas.

16 Q What happened on that occasion?

17 A He was supposed to meet me as the
18 agreement before, but he never showed up.

19 Q He never came to Derby?

20 A He come to Derby that particular
21 time and he picked up, but the last time I see
22 him he was shorter \$8,000, and we made the
23 agreement to meet each other on Canal Street
24 again, but he never showed up.

25 Q Did you meet him anywhere else in

TRANSCRIPT OF ROMANO TRIAL

84a

3 ebbr [17] Hedges-direct

Q Do you recall having a conversation with Joseph Cahill after you were released from jail on the sentence that you served 60 days on?

MR. La ROSSA: Objection.

THE COURT: Overruled.

MR. La ROSSA: May we fix the date, your Honor?

THE COURT: Overruled at this point.

A It was a while after that that I came out of jail, and Joe said, "Wake me up in the morning."

And I woke him up. At 9 o'clock or something I woke him up, in the morning. I went over there at 9 o'clock and I woke him up, and he got dressed, and we took a cab and we went to Rockefeller Center.

We got off at Sixth Avenue and walked down, and we crossed the street. Joe crossed the street.

And he met this guy and shook hands with him, and the guy took something out of a briefcase and gave it to him.

He crossed the street and gave it to me, and he said, "Take this to my house," and tell his

TRANSCRIPT OF ROMANO TRIAL

94a

1 eobr {27}

Hedges-direct

Q What did these packages look like?

A Two glassine packages.

Q What was inside; what was the appearance of them?

A They were plastic and there was white stuff in them.

Q Had you met Dominick before that evening?

A Yeah.

Q Do you remember where you met him?

A Am Vets.

Q What is his last name, Mr. Hedges?

A Romano.

Q Do you see him in this courtroom?

A Yes.

Q Would you point him out, please?

A That fellow right over there (indicating) sitting on the end.

MR. LEISURE: Indicating the defendant Dominick Romano, your Honor.

THE COURT: Yes.

Q Mr. Hedges, after you went to the Fifth Avenue Hotel, did you go to another hotel with Joe Cahill?

A Yes, the Gramercy Park Hotel.

TRANSCRIPT OF ROMANO TRIAL

95a

2 eobr

{28}

Hedges-direct

Q About how long after the Fifth Avenue Hotel incident did that take place?

A I guess about three weeks or so.

Q Do you remember how you got there?

A The Gramercy Park? I believe Ally drove us up there.

Q You referred to Ally once before, Mr. Hedges. What is his last name?

A Romano.

Q Do you see him in this courtroom?

A Yes.

Q Would you point him out, please?

A That fellow over there in the back row.

MR. LEISURE: Indicating the defendant Arnold Romano.

Q Did you spend the night at the Gramercy Park Hotel?

A Yes.

Q Would you tell the Court and jury what happened there?

A Well, Joe and I got a room there and the next morning a knock came on the door and a fellow walked into the room and Joe spoke with him. He introduced me to him and he says that I would be working

3 eobr {29}

Hedges-direct

with him from now on.

Q Did Joe indicate what his name was?

A Pierre and he introduced himself as
Pierre Roulet.

Q Had you ever seen him before?

A Yes, in Rockefeller Center.

Q I show you Government's Exhibit 4 for
identification, Mr. Hedges. Can you identify that
exhibit?

A Yes.

Q Who is that?

A Pierre Roulet.

Q Did you have a conversation with Pierre
Roulet at the hotel?

A Yes, he told me the next time he would
be in and that his hotel was the Century Hotel.

THE COURT: He told you the next time
he would be in?

THE WITNESS: Yes, you know, the next
time he would be arriving, I guess, two or three weeks
or whatever it may be.

Q Did anything else happen on that occasion?

A At the Gramercy Park?

Q To review, Mr. Hedges, I believe

TRANSCRIPT OF ROMANO TRIAL

97a

4 eobr [30] Hedges-direct

you testified that a knock came on the door --

MR. La ROSSA: Objection.

MR. FRIEDMAN: Objection.

MR. HANRAHAN: Objection, your Honor.

THE COURT: Sustained.

Q After you were introduced to Roulet,
what happened?

A Oh, he dropped his pants and pulled
out two packages and gave them to us.

Q What happened after he gave them to
you?

A I believe I took them to my house.

Q Did you meet Pierre Roulet again?

A Yes.

Q About how many times did you meet him?

A Oh, approximately 10, 12, 13 times.

Q Where would those meetings take place?

A Various hotels.

Q Do you remember the names?

A Governor Clinton, McAlpin, New Yorker,
Commodore, Martinique, Gramercy Park. That is all
I can remember.

Q What happened when you would meet him
at those hotels?

TRANSCRIPT OF ROMANO TRIAL

98a

5 eobr [31] Hedges-direct

A The same procedure. He would come in and he would drop his pants and come up with two of these packages and in turn I would give him money that Joe had given me.

Q How much money did you give him on these occasions?

(72) A \$9,000.

THE COURT: On each of these occasions or all together?

THE WITNESS: No, on each of these occasions.

THE COURT: Each of them.

Q When you registered at these hotels, what names did you use?

A All different names.

Q Do you recall any of them?

A Hendricks, Wilson, all different names.

MR. HANRAHAN: Your Honor, I can't hear.

THE WITNESS: All different names.

eot4a

TRANSCRIPT OF ROMANO TRIAL

102a

eor-35

Hedges-direct

THE WITNESS: Well, the car, it belonged to Iacelli and Ricucci.

THE COURT: Who was driving it?

THE WITNESS: I was driving it.

THE COURT: Which Romano did you

meet?

THE WITNESS: Alley Romano.

Q During the course of your meetings at hotels with Roulet, did he ever bring anyone else up with him?

A Yes, I think it was the Commodore. There came a knock on the door and he came in with this fellow and he introduced him as Henry and they both took down their pants and took out of these jockstraps these packages. I told them I only had money for him; that I would bring the money over to his hotel tonight.

Q Who did you tell this to, Mr. Hedges?

A To this Pierre Roulet, and this other fellow introduced himself as Henry Pierre and said his hotel is the Henry Hudson Hotel and that is where he would be.

TRANSCRIPT OF ROMANO TRIAL

103a

eor-36}

Hedges-direct

So that night I got, I think,
\$9,000 off Joe and I went over to the Century
Hotel and gave it to Roulet.

Q While you were in the hotel room,
did you give any money then?

A Yes. I gave \$9,000 to Roulet and
he gave it to the other guy and, you know,
I told him I would bring the rest to him
tonight.

Q In what hotel did you first meet
Henri-pierre?

A The Hotel Commodore.

Q How many times did you meet
Henri-pierre?

A About six or seven times, I guess.

Q Do you remember the last time
that you saw him?

A I don't remember the date, but
it was cold.

Q How about Roulet, do you remember
the last time you saw him?

A 19 -- I would say the last time
I seen Pierre was '59, I think. The last time
I seen Roulet was in '59 also, I believe. The

TRANSCRIPT OF ROMANO TRIAL

105a

ebr-[38]

Hedges-direct

At 4 o'clock, or around there.

And I went down there, at 4 o'clock,
and gave Steve Grammauta the package.

He got into a car with Viscardi
and they went away.

Q I show you Government's Exhibit
159 for identification. Can you identify
that exhibit, Mr. Hedges?

A That is Viscardi.

Q Mr. Hedges, do you recall whether
or not you went to Grand Central Station
during this period?

MR. LA ROSSA: I object to the
form, your Honor.

THE COURT: Overruled.

THE WITNESS: I think it was
sometime in '58 that we went to --

Q Would you tell the court and jury
what happened on that occasion?

A Well, we drove up there, and --

Q Who is "we"?

A Joe Cahill, Alley and I.

And Joe and Alley went out and
came back with two suitcases and put them in

TRANSCRIPT OF ROMANO TRIAL

106a

el-39]

Hedges-direct

the trunk of the car.

Q Where did you stop at Grand Central Station?

A In the place where the taxicabs pull in.

Q Do you know the name of that avenue?

A I think it's Vanderbilt Avenue.

Q And once you got there, what happened?

A Well, Alley and Joe went out, went down to the station and come back with the two suitcases.

Q What did you do?

A I sat in the car.

Q And what happened after they returned with the two suitcases?

A Well, we took the two suitcases to Joe Cahill's house, and left them in Joe Cahill's house until that night.

And then a car -- I don't know who was driving the car. I remember it was a green and white car. And Joe and I took the two suitcases down and put them in the back

TRANSCRIPT OF ROMANO TRIAL

109a

ebr-42]

Hedges-direct

We rode back to the bar. He picked up this package he left in the bar and we rode back to around Sixth or Seventh Street, I guess, somewhere.

Q Mr. Hedges, when did you first see that package that Alley Romano picked up in the bar?

A To be honest at this moment I really can't recall. I can't recall.

Q All right. After he picked up the package in the bar, what happened?

A Well, we drove down to 6th, 7th or 8th Street, somewhere around there -- oh, no, it was down further. 4th, 5th or 6th Street.

Schoenfeld got in the car. Alley gave him the package and he handed Alley some money.

Q Do you know how much money?

A I believe it was \$4,000.

Q Did you ever go to a place called the Palm Restaurant?

A Yes.

A-67

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TRANSCRIPT OF ROMANO TRIAL

115a

5 ebbr [48] Hedges-direct

I said to him, "You are in a trap here. This guy could be followed and you are just trapped. You can't get out of it."

So he went down and Guanti came up, and I said, "The guy isn't here yet."

And then he went down.

Then Dominick came up, and I told him, "Get the hell out of here. The guy didn't come. They will think we are running a bookmaking ring here, the house detective or something."

I went down, and finally this guy showed up, and that's all I can recall about that.

MR. La ROSSA: May we fix a date now?

THE COURT: Fix the time.

Q Do you remember approximately when that was?

A I think it was in '58.

~~Q Do you recall whether it was the early part of '58 or the later part?~~

A I am trying to think of what I was wearing.

I'd say it would be the fall of '58.

Q Did you have any further conversation with Dominick Romano in the hotel room?

TRANSCRIPT OF ROMANO TRIAL

116a

6 ebbr [49]

Hedges-direct

A With Romano?

Q Did he tell you what he was going to do?

MR. La ROSSA: Objection, your Honor.

THE COURT: Overruled.

What did he say?

THE WITNESS: Yes.

Ad
Don't
A He told me that he was going to take over this, you know, he was going to meet these guys in the hotel from now on, you know. He would have taken over this job.

Q Mr. Hedges, I show you Government's Exhibit 6 for identification and ask you if you can identify that exhibit.

A That's Aspelund, Clarence Aspelund.

Q Do you recall the occasion when you first met Clarence Aspelund?

A Yes. It was in 1959.

Joe and I rented a suite of rooms at the Vanderbilt Hotel.

The next morning we went out, we left the Vanderbilt Hotel, and we went down to the Amvets Club.

We got back to the hotel about 4 or 5 o'clock in the morning.

TRANSCRIPT OF ROMANO TRIAL

165a

2 ebb[99]

Hedges-direct

Q Do you recall whether or not you had
a conversation with Pacelli and Ricucci about
Dominick Romano?

A Yes. One night I think it was Joe Cahill and I went up there, and he wanted to see him for something or other.

Q Where did you go?

A To East Harlem.

And they wanted to stop things. .
They said that -- they were talking, and in the conversation they said like that "Dom, he comes
up with a broad sitting in a car, and he hands
me a package right on the middle of Pleasant
Avenue and 117th Street or 116th Street.

of what?

MR. La ROSSA: May we fix a time on this?

Q Do you recall when that conversation was?

A No, I don't.

Q Do you recall the year or the years that it took place?

A I think it might have been 1959.

Q You testified before lunch that Ally Romano came up to your apartment on one occasion

TRANSCRIPT OF ROMANO TRIAL

1 534a Bourbonnais-direct

[501]

2 by Mr. Barnier in Paris, and Mr. Barnier told
3 me that he would arrange for Mr. Cahill and I to
4 meet, and we were given a method of identification
5 whereby Mr. Cahill was supposed to carry a
6 book, a blue book, and I was supposed to carry
7 a blue book. Upon carrying that blue book,
8 Mr. Cahill was supposed to bring out a half of
9 a lottery ticket, a French National lottery
10 ticket, and I had the matching other half
11 of it, and this was our method of getting
12 acquainted, or the purpose of identification,
13 I would say.

14 Q The first time you met Mr. Cahill
15 was where, the Plaza?

16 A At the Plaza Hotel.

17 Q When was that, about? Approximately.

18 A I would place that to be, to the best
19 of my recollection, I would place that to be
20 perhaps August or August to September --
21 let me see. I would say between July and
22 September, 1957.

23 Q Going back a moment to your
24 conversation with Mr. Barnier about taking the
25 packages over, did he say anything else to

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537a

1hr-8

Bourbonnais-direct

[504]

these deliveries, and, therefore, I suggested that we should meet in one particular area, which is known as the Manhasset area of Long Island. It is between Port Washington and Manhasset on the Miracle Mile.

Q You suggested to Cahill that you meet there when?

A Excuse me?

Q You suggested this to Cahill?

A Yes, I did.

Q Did there come a time when you saw Mr. Cahill again?

A I saw Mr. Cahill again, yes, sir.

Q When was that in relation to the first time?

A I do not quite recall. I would estimate that to be perhaps between two weeks, perhaps a month afterwards. I do not quite remember.

Q Where did you see him?

A In that designated area on the Miracle Mile in Manhasset.

Q Can you make it any more specific than that?

1hr-9

538a Bourbonnais-direct

[505]

2 A Well, there was a theater there
3 called the Cinema, which is nearby there, not too
4 far from a restaurant called Patricia Murphy.
5 This was the general area where we would
6 meet. There was also another restaurant
7 called the Howard Johnson which is near that
8 particular area there, and we would meet there
9 frequently.

10 Q Would you tell us what transpired
11 on this first occasion when you met Mr. Cahill
12 out on the Miracle Mile?

13 A Well, prior to my departure from
14 Paris, Mr. Barnier had given me a large
15 package, and I was told to give this to Mr.
16 Cahill, which I did.

17 Q Did Mr. Cahill give you anything?

18 A I don't remember on that
19 first trip, sir.

20 Q Did you meet Mr. Cahill again
21 after that?

22 A Yes, sir.

23 Q Where was that meeting?

24 A Again, in that same general area,
25 in the Manhasset area there. Manhasset,

539a

1
1hr

----- Bourbonnais-direct

[506]

2 Port Washington area.

3 Q What would transpire on that third
4 occasion? What did transpire?

5 A Well, again I gave him more packages,
6 which I received from Mr. Barnier in Paris.

7 Q Did he give you anything?

8 A Yes, sir. He gave me some money.

9 Q Do you recall the procedure of the
10 actual meeting, how this transfer would take
11 place?

12 A Would you repeat your question?

13 Q How would your transfer actually take
14 place of the package and the money?

15 A Well, normally, as I have stated
16 before, we would pick out one particular
17 area, usually in front of this movie house or
18 the restaurant, and he was familiar with my
19 automobile. Then he would come up to my car,
20 I would get out of my car, open up the trunk,
21 usually, and give him this package, and most
22 of the time he would give me money in return.

23 Q By the way, how were you paid your
24 commission or salary, or whatever you call it?

25 A Well, Mr. Barnier would tell me

A-74

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1hr

Sourbonnais-direct

[507]

exactly what the weight of the package would be,
5, 6, 7, 8 kilos, whatever the circumstances
might be, and I would receive \$200 per kilo, so
whatever the weight of the package was, I just
took it off the top and I returned the rest of the
money to --

Q What do you mean, you took it off
the top?

A I took it off the money which I
received from Mr. Cahill and would return
the balance of the monies to Mr. Barnier.

Q Mr. Barnier in Paris?

A Yes.

TRANSCRIPT OF ROMANO TRIAL

541a

1 1hr

Bourbonnais-direct

503

2 Q Did you meet Mr. Cahill again
3 after that?

4 A Oh, yes, I did.

5 Q And where was that?

6 A Well, we met in various areas, as
7 I said before, in Long Island, and then we
8 came around the Queens area for a while. We
9 felt that we didn't want to be seen too many
10 times in one particular area. We felt that
11 it would be perhaps too conspicuous.

12 Q Would you estimate how often you
13 made such transfers to Mr. Cahill?

14 A Oh, many times. 20, 25, 30 times,
15 possibly, maybe more. I don't know.

16 Q And this was over how long a period?

17 A Let me see. '57, '58, '59. I
18 would say over a period of a year, a year
19 and a half. A year and a half I would say
20 would be closer to it.

21 Q Did you ever see Mr. Cahill in a
22 car at the shopping center?

23 A Oh, yes, I did.

24 Q Do you remember what the car
25 looked like?

A-76

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1 lhr

Bourbonnais-direct

[509]

2 A Well, I have seen him in three ,
3 different types of automobiles. Two of them
4 were Cadillacs, Coup de Villes.

5 Q Do you remember what color they
6 were?

7 A Yes. One was a very light blue.
8 I think they called it a baby blue Cadillac.
9 And another was one either a black or a very deep
10 blue. The same year cars.

11 And on one occasion I met him in
12 Port Washington and he had an -- I believe it was a
13 Lincoln Capri, sor tof a tannish yellowish
14 color, a coupe, '56, '57, possibly. I don't
15 remember.

16 Q Would you tell the Court and jury
17 how you would bring these packages into the
18 United States?

19 A Well, my schedule was such that
20 I would leave Paris late in the night, in the
21 late hours the previous night, and this would
22 bring us into New York in the early morning
23 hours, approximately 5, 5:30, 6, 6:30 in the
24 morning.

25 And of course there were many

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1 ebr

548a

Bourbonnais-direct

515

2 place, he, in turn, would give me money
3 which I would take back to Paris on my
4 return flight from Los Angeles back to Paris, I
5 would give the money to Mr. Barnier and then come
6 back to New York. That was the completion of
7 the flight.

8 Q Now, do you recall when was the
9 last time, approximately, you gave packages
10 to Mr. Cahill?

11 A Mr. Cahill?

12 Q Yes.

13 A (No response.)

14 Q If you recall.

15 A I would say the very first part
16 of 19 -- let me see, now, if you will -- I
17 would say '59, the very first part of 1959.

18 Q Do you know a person by the name of
19 Charles Hedges?

20 A Mr. Hedges?

21 Q Yes.

22 A Yes, I know him.

23 Q When was the first time that you met
24 Mr. Hedges?

25 A I met Mr. Hedges in the very first

TRANSCRIPT OF ROMANO TRIAL

1 ebr

549a

Bourbonnais-direct

[516]

2 part of 1959. I would say, perhaps, February
3 or March.

4 Q Was that around the last time that you
5 delivered to Cahill?

6 A Yes. That's right.

7 Q And would you tell us the circumstances
8 under which you saw him?

9 A Well, again, if you will, I was
10 supposed to meet Mr. Hedges up here in New York
11 on 55th Street, I believe, and First Avenue.

12 Q You were supposed to meet Mr. Hedges?

13 A No. I was supposed to meet Mr.
14 Cahill. And for one reason or another Mr. Cahill
15 didn't come to that particular meeting and
16 instead came Mr. Hedges who said "I am
17 coming in place of Joe."

18 So he got into my car and we
19 went for a drive.

20 Q What kind of car did you have at
21 that time?

22 A I had a '58 Lincoln at the time.

23 Q So Mr. Hedges got in the car. What
24 transpired when he got in the car, if anything?

25 A Mr. Hedges gave me some money, a very

1 ebr Bourbennais-direct

{ 517 }

2 small amount of money.

3 Q Was there any conversation?

4 A Yes. I asked him, if I recall,
5 if he would be the person with whom I would be
6 dealing in the future.

7 Q Did he reply?

8 A Beg your pardon?

9 Q Did he reply?

10 A Yes. He told me he didn't know.

11 Q He didn't know?

12 A But he did ask me for my schedule,
13 which would be coming in again. So I did tell him.
14 and I told him that I would be coming in within
15 two or three weeks from that day, and I told him
16 that I would like to meet him in an area at
17 LaGuardia Field in the American Airlines parking
18 terminal there two or three weeks later.

19 Q Did you describe where you wanted to
20 meet him?

21 A Yes, I did.

22 Q Did there come a time
23 that you saw Mr. Hedges again?

24 A Yes, sir. I saw him approximately
25 two or three weeks after our first meeting up

TRANSCRIPT OF ROMANO TRIAL

551a

1 ebr

Bourbonnais-direct

518

2 here in the City of New York.

3 Q And where was that meeting again,
4 sir?

5 A At LaGuardia Airport.

6 Q No, the first meeting.

7 A At 55th and First.

8 Q Will you tell us what transpired
9 at the second meeting at LaGuardia?

10 A As I have stated, I told him when
11 I would be arriving again with another delivery
12 and I had asked him to meet me at LaGuardia
13 Airport in the American Airlines parking
14 area late in the evening on one particular
15 day, I don't recall the date, and he was there,
16 and I gave him two large suitcases, and he gave me
17 a large sum of money to take back to Paris.

18 Q Do you remember about how much money
19 it was?

20 A It was close to \$100,000.

21 Q Mr. Bourbonnais, I show you what
22 has been marked Government's Exhibit 39 for
23 identification. Will you identify the person
24 in that photograph?

25 A Yes, sir. A-81

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1 ebb 1 Bourbonnais-direct

2 Q Well, describe the Plaza Hotel situation.

3 A Well, if it was the Plaza, we had
4 a blue book and the lottery ticket as a means of
5 identification. We walked around for a half hour
6 or so.

7 And he told me at the time that he was
8 staying at the Park Chambers Hotel. The Park Chambers
9 Hotel -- whatever the hotel was.

10 Q Yes. Continue.

11 A And he asked me where my car was parked.

12 I told him it was parked in the same
13 vicinity, incidentally, and he told me to bring my
14 car around to the front door.

15 Q The front door of what?

16 A The hotel, the Park Chambers, and the
17 bellhop came and helped us put the three suitcases in
18 my car.

19 Q The bellhop put three suitcases in your
20 car?

21 A Yes, sir.

22 Q And you mentioned another occasion involving
23 Penn Station?

24 A Yes, sir. There was another occasion.

25 At that time he and I went to

ebbr 2

Bourbonnais-direct

[523]

Pennsylvania Station and he had three more suitcases in one of these lockers, and he pulled them out. He carried two suitcases, I carried one, and we put that again in my car.

Q You mentioned earlier that the suitcases that you had given Hedges you had gotten from Coscia. Do you remember on which occasion, the Penn Station occasion or the Park Chambers Hotel occasion that happened?

A I couldn't tell you, sir. I don't quite remember what occasion it was.

Q Do you remember how many suitcases on each occasion, the Park Chambers Hotel and the --

A Three suitcases on each occasion.

Q You say you gave two to Hedges. Do you remember what you did with the others?

A I gave one to Mr. Cahill, to the best of my recollection, prior to the time I had met Mr. Hedges. I believe I had given Mr. Cahill one suitcase, and I gave the two remaining suitcases to Mr. Hedges.

Q Do you remember what happened to the other three suitcases?

A Then another gentleman came in on the

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TRANSCRIPT OF ROMANO TRIAL

580a

Bourbonnais-direct

547

1 hr-2

3 o'clock in the afternoon, if I recall.

Q What happened? Did Mr. Tarditti come?

A No, I went there but -- at the specified time, but Mr. Tarditti was not there so I walked around a bit and I came back one hour later. Then Mr. Tarditti was there at that time.

Q Did he have any explanation why he --

A Yes, he did. There was a change of time or he had forgotten to adjust his watch properly, and there was a time of one hour between his time and ours.

Q When you met Tarditti there, did you have a conversation?

A Yes. We were talking about arrangements for another delivery on the 2nd of October. He was expecting his friend, the ambassador, to arrive from Belgium on another flight later in the evening, and he wanted to know where it would be convenient for us to meet.

So I told him that we could perhaps meet at that particular designated place near

581a

1
1hr-3

Bourbonnais-direct

[548]

2
the Plaza Hotel.

3
MR. HANRAHAN: Your Honor, may we
4
fix the year here?

5
THE COURT: Could you fix the
6
year?

7
THE WITNESS: The year, yes. That
8
was October, 1960, sir. October 2, to be
9
precise.

10
Q So Tarditti told you that his
11
friend wouldn't be in until the evening?

12
A Yes. He said "Could I take a
13
look at the car, could I see wherethe car is?"

14
Q What car was this?

15
A Mr. Calamaris' car. He had a
16
station wagon then at the time.

17
Q Was Mr. Calamaris at this meeting
18
place?

19
A He was not in the car. He was away
20
from Mr. Tarditti. I mean, he was, I believe,
21
across the street from there because I was
22
supposed to let him know ecactly as to what time
23
we would meet for the delivery, and I ddidn't
24
know. I was waiting for Mr. Tarditti to tell
25
me what time his friend would arrive .

TRANSCRIPT OF ROMANO TRIAL

582a

1 lhr-4

Hourbonnais-direct

549

2 So, this is the reason Mr. Calamaris
3 was somewhere else. I was supposed to tell
4 him what time would be agreeable for us to meet.

5 Q What happened after that?

6 A Well, we walked back around the
7 Plaza Hotel and I showed him where Mr.
8 Calamaris' station wagon was parked, and the
9 station wagon had been involved apparently
10 in an accident. The headlight was damaged,
11 and in view of the fact that the Ambassador
12 was supposed to arrive around 9 o'clock that
13 evening, Mr. Tarditti felt it would be too
14 dangerous actually for Mr. Calamaris to pick
15 up the merchandise and drive in town with one
16 headlight. So he suggested that we should put
17 off the delivery date for the following day,
18 which we did.

19 Q On the following day did you again
20 meet Mr. Tarditti or Mr. Calamaris?

21 A I met Mr. Calamaris again right
22 across the Plaza Hotel. I was supposed to
23 give Mr. Tarditti a large sum of money
24 for his services.

25 Q Where did you get this money from?

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A-86

TRANSCRIPT OF ROMANO TRIAL

583a

1 1hr-5

Bourbonnais-direct

550

2 A Mr. Calamaris would give it to me.

3 Q Did he give it to you?

4 A Yes, he did.

5 Q This was at the Plaza?

6 A Up across the street from the Plaza,
7 by the park, yes.

8 Q What time of day was it, do you
9 remember?

10 A This was around 10 o'clock, 9,
11 10 o'clock in the morning.

12 Q Did anything else happen that date
13 in connection with this --

14 A I told him to meet us, that is,
15 excuse me, I told Mr. Calamaris to meet me on the
16 corner of 72nd Street and Lexington Avenue at 12
17 o'clock, and this was the time that I had
18 arranged for the delivery to be made with
19 Tarditti and the ambassador.

20 Q I show you Government's Exhibit 59
21 for identification. Can you identify the
22 person in that picture?

23 A That is Mauricio Rosal, the
24 Guatemalan ambassador.

25 Q So you had arranged to meet at, did you

A-87

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1 lhr-6

2 say 72nd Street?

3 A 72nd and Lexington, yes, sir.

4 Q What time of day was this meeting?

5 A We were to have met at 12 o'clock.

6 Q Did you go to that location at 12
7 o'clock?

8 A I went there and I had asked Mr.
9 Calamaris to meet me there. He had gone
10 there by himself, and I had also asked Mr.
11 Tarditti to meet me there, so -- and I went
12 there by myself.

13 Q When you arrived there, did you
14 see any of these other people in the area?

15 A Any other people in the area?

16 Q Any of these other people that
17 you just mentioned.

18 A I met Mr. Tarditti.

19 Q Did you have a conversation with
20 him?

21 A Yes. I suspected then that
22 we were being followed by the authorities,
23 and I told him so. I said "I have a feeling
24 that we are being followed."

25 I had noticed cars following me, and

TRANSCRIPT OF ROMANO TRIAL

585a

1 hr

sourbonnais-direct

{ 552 }

2 I told Mr. Tarditti that these automobiles have
3 been following me for a week or so.

4 And he laughed at me and ridiculed
5 me, telling me that as long as the merchandise
6 was in the possession of this highly placed
7 person, he didn't tell me at the time who this
8 man was, the ambassador, he said, there was no
9 danger and it was ridiculous on my part to assume
10 that there would be any danger. You know,
11 he told me that we should go ahead with it.

12 Q Was Calamaris there at the time?

13 A No, Mr. Calamaris was around the
14 corner from there. I was supposed to meet
15 him around the corner.

16 Q What happened after that?

17 A I was very insistent. I told Mr.
18 Tarditti that I didn't want the transaction
19 to take place there, that I felt it was
20 not safe, and I suggested we should go on
21 further to I believe it was 80th Street and
22 First or Second Avenues, I don't quite
23 recall.

24 And so Mr. Tarditti got into the
25 cab with the ambassador --

ONLY COPY AVAILABLE
A-89

586a

1hr

Bourbonnais-direct

[553]

2 Q What cab?

3 A I beg your pardon?

4 Q What cab is this?

5 A A taxicab in which the ambassador
6 arrived. I don't know where from, but he
7 had three suitcases, I believe, or four
8 suitcases, at the time. I don't know.

9 Q How do you know that?

10 A I think he had four -- well, the
11 authorities got ahold of the suitcases, and,
12 of course -- that was it. We were arrested.

13 Q So you made the suggestion that you
14 go further uptown?

15 A Yes.

16 Q What happened thereafter?

17 A Then I went back to Mr. Calamaris'
18 station wagon and I told him that I was
19 suspicious of -- that something was transpiring,
20 taking place, and as we made a 90-degree turn
21 we were -- to proceed onto -- what was it,
22 Third or Second Avenue, I forget, we were
23 arrested.

24 Q You and Calamaris were arrested?

25 A In the station wagon, yes.

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1 lhbr 1

1144a

2 (4:00 p.m.)

3 (Court Exhibits 6 and 7 marked.)

4 (In open court, jury absent.)

5 THE COURT: Mr. Leisure, would
6 you get me Aspelund's recipe book?

7 MR. LEISURE: We have one page from that
8 book, your Honor.

9 THE COURT: Yes. The page having
10 the address.

11 MR. LEISURE: Exhibit 41 in evidence,
12 your Honor.

13 (Jury present.)

14 THE COURT: I have your note, ladies
15 and gentlemen:

16 "May we have Aspelund's recipe book,
17 the page having the address?"

18 The clerk will give that to you as
19 soon as you have the second part.

20 "May we have the end of the Judge's
21 charge, three guidelines, what constitutes con-
22 spiracy?"

23 Would you please read that, Mr. Reporter?

24 (The reporter read the record.)

25 THE COURT: You may resume your

[1188]

1 1:40 2

1145a

2 deliberations.

3 THE CLERK: May the record show
4 Government's Exhibit 41 is given to the forelady
5 of the jury.

6 (Jury resumes deliberations at
7 4:05 p.m.)

8 MR. MARKOWITZ: Your Honor, I have
9 an application more by way of asking your Honor's
10 advice as to what should be done. I was given
11 minutes dated November 27th, 1968. These
12 minutes were supplied to me, and that date, if your
13 Honor recalls -- the date on the notice of appearance
14 by other counsel was October 8th.

15 We have the minutes of October 8th and
16 September 17th and August 28th, which is already
17 filed in accordance with your Honor's direction.
18 But in ordering all the minutes, and this has nothing
19 to do with my appearance at the time, the minutes
20 of November 27th are obviously incorrect, for many
21 reasons.

22 First of all, it says that the defendant
23 Arnold Romano, before Judge Bonsal, was represented
24 by David Markowitz in court. I was not present in
25 court that day. As a matter of fact, I was in

TRANSCRIPT OF ROMANO TRIAL

1 lhbr

1154a

1207

2 (In open court, jury absent,

3 6:35 p.m.)

4 THE COURT: Bring in the jury.

5 (Jury present.)

6 THE COURT: I have your note, and
7 the delay is because it has taken us some time
8 to find exactly what parts of the testimony you
9 want. Your note reads, "Would it be possible
10 to have these in writing. What exactly are
11 Counts 10 and 11 in the indictment as mentioned
12 in the Judge's charge to the jury?

13 "2. Hedges' testimony regarding
14 Guanti's receiving packages and dates thereof.

15 3. Hedges' testimony regarding
16 Dominick Romano's delivering the packages when
17 in car with girl and dates thereof."

18 It would be possible to give you the
19 two overt acts, 10 and 11. They are not counts,
20 they are overt acts, No. 10 and 11. I can give
21 you those in writing and will.

22 The testimony of Hedges, as you know,
23 is rather extensive. It wouldn't be possible
24 to separate these two parts out, but I will have
25 the reporter read them to you. It will take too

TRANSCRIPT OF ROMANO TRIAL

1 lnbr

1155a

[1202]

2 much time for us to separate them out.

3 So, would you read, Mr. Reporter,
4 Hedges' testimony regarding Guanti's receiving
5 packages and dates thereof?

6 (The reporter read the record.)

7 THE COURT: That's all the testimony.

8 (Court Exhibit 2 marked.)

9 (Jury resumes deliberations
10 at 6:50 p.m.)

11 (Recess.)

12 (In open court, jury absent, 9:00 p.m.)

13 MR. LEISURE: May it please the
14 Court, the government at this time has an application
15 for a clarifying instruction to the jury with
16 respect to the overt act requirement in the con-
17 spiracy charged.

18 I apologize to your Honor for making
19 this application so late. It is now after
20 9 o'clock in the evening, but the length of the
21 deliberations and the questions which have been
22 asked by the jury convince me that some
23 clarification of the overt act is needed.

24 The government's position is that
25 there are three and only three requirements

TRANSCRIPT OF ROMANO TRIAL

1156a

1209

1 lhbr

2 concerning an overt act in a conspiracy case.

3 The first requirement is to show that something
4 happened after an agreement was reached, that it
5 was not a situation of people simply sitting
6 around a table and dreaming up a scheme and doing
7 nothing thereafter, that some affirmative action
8 was taken by any of the co-conspirators to effectuate
9 the objects of the conspiracy.

10 The second requirement of an overt act
11 is to place the venue in the proper district, which
12 is not in issue in this case.

13 The third element, which is important
14 in this case, is that some overt act was performed
15 by any co-conspirator or any member of the conspiracy
16 within the period of limitations.

17 I respectfully submit in addition to that,
18 your Honor, that that overt act can be accomplished
19 by a member of the conspiracy, whether or not that
20 overt act is alleged in the indictment. I respect-
21 fully request a clarifying charge as to at least the
22 first element.

23 THE COURT: That is not an element of
24 an overt act. That is a reason why you have to have
25 one. It is nothing for the jury.

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1157a

1220

2 MR. LEISURE: Your Honor, I am con-
3 vinced the jury does not understand the overt
4 act --

5 THE COURT: Mr. Leisure, I think you
6 are being presumptuous to assume what is troubling
7 the jury. I don't know what is troubling them
8 or if anything is troubling them. I am sure
9 that in my charge on overt acts it contains all
10 that the jury needs to know about overt acts in
11 this case. I have no doubt you would like
12 the Court to give them a little push at this point
13 for the government, but I don't intend to do it.
14 I am not a prosecutor, I am the Judge.

15 MR. LEISURE: I am not interested in
16 a push. I am interested in the basic understanding --

17 THE COURT: I decline to do it.
18 If you can point to an error in the charge, I would
19 be happy to correct it.

20 MR. LEISURE: Your Honor, the jury
21 does not understand the basic meaning of an overt
22 act in this case. That is the government's position.

23 THE COURT: There is no
24 requirement that they need to. I have given them
25 the law. If you can show me any error in the

TRANSCRIPT OF ROMANO TRIAL

1hr

1160a

[1213]

2 UNITED STATES OF AMERICA
3 V.
4 CARMINE GUANTI, et al.

5 New York, March 14, 1969
6 12:20 p.m.

7 (Trial resumed.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Bring in the jury,
please.

(Jury present.)

THE COURT: I have a copy of your
note asking for a copy of Mr. La Rossa's
summation. You can't have that. That is
not evidence. That is an argument. You
will have to remember it, if you can remember
it. He doesn't have two arguments. But
it is clear to me from the notes you have
been sending me and the length of time that
you have been out that you are confused, I
think, about exactly what the essential
questions are that you must decide in this

1

lhr

1161a

[1214]

2

case. I am not putting pressure on you.

3

You finish, take all the time you want. I

4

want to repeat these questions that you must

5

decide so that they will be perfectly clear

6

to you. Essentially, you have the following

7

three questions to answer. Has the government

8

proved beyond a reasonable doubt:

9

1. That the conspiracy charged

10

in the indictment was formed by two or more

11

persons. That doesn't mean that it has to be

12

formed by any defendant on trial. It is

13

any defendant or co-conspirator named in the

14

indictment. Any two of those people.

15

That it was formed sometime in 1956 and that it

16

continued after September 30, 1959. You will

17

recall my instructions that once a conspiracy

18

is formed, it is presumed to continue until

19

its objects have been accomplished.

20

2. The second question, as to

21

each defendant, that he become a member of

22

the conspiracy. in other words, the

23

government must prove beyond a reasonable

24

doubt as to each defendant that he joined

25

the conspiracy, knowing what its unlawful

1hr

1162a

[1215]

2 purpose was, that it's purpose was to violate
3 the narcotic laws as charged in the indictment.
4 If they prove that, he becomes a member of the
5 conspiracy and he is responsible for the acts
6 of every other member of the conspiracy
7 done in furtherance of the objectives and
8 purposes of the conspiracy, whether he was
9 there or whether he was not.

10 The third question. That any member
11 of the conspiracy, either any defendant or any
12 co-conspirator, committed either overt act 10
13 or 11.

14 You will notice that once the
15 government proves beyond a reasonable doubt
16 that a defendant joined an existing conspiracy
17 to violate the narcotic laws as charged in
18 this indictment, and that he did so knowing
19 what he was doing, it is not necessary for
20 the government to prove that a defendant
21 himself did anything or that he ever
22 committed an overt act, because, in a conspiracy,
23 every member is considered to be the agent
24 of every other member and every member is
25 bound by the act in furtherance of the

TRANSCRIPT OF ROMANO TRIAL

1163a

1216

1 hr

2 conspiracy done by any other member, so long
3 as the conspiracy continues. This is true
4 whether that member or that defendant was present
5 when the act was committed or whether he even
6 knew about it. He doesn't even have to
7 know about it. He is bound by it if it was
8 done by a co-conspirator, any other member of
9 the conspiracy, in furtherance of the objectives,
10 the unlawful objectives; unless he shows by a
11 preponderance of the evidence that he
12 affirmatively withdrew from the conspiracy.
13 Here he must show that he withdrew before
14 September 30, 1959.

15 The two overt acts here, you
16 will see if those were done by any member
17 of the conspiracy, not whether they were done
18 by any of these defendants on trial. That
19 isn't the question.

20 Has the government proved beyond
21 a reasonable doubt that they were done
22 by any member of the conspiracy? I hope
23 that clarifies these instructions, but if it
24 doesn't, please don't hesitate to say, "We
25 want further instructions about this" or "about

lhr

1164a

(1217)

that," anything you want in the way of the evidence or further clarification of my charge to you.

Resume your deliberations.

(Jury resumes deliberations at

12:25 p.m.)

(In open court, jury absent.)

MR. LA ROSSA: May I, your Honor?

THE COURT: Surely, Mr. La Rossa.

MR. LA ROSSA: For the record,

I respectfully except to your Honor's instruction that you just gave which was done, I think the record will note, without any request by the jury.

The portions that your Honor chose to submit to them and I think basically the manner in which it was done might have indicated to the jury that there was no question here and that they were belaboring a point.

I feel if we were going to go that far into the fact, we should give them the instructions with respect to reasonable doubt or any of the other instructions that your Honor gave in the charge.

TRANSCRIPT OF ROMANO TRIAL

1167a

1220

1 hr

2 defendant Frank Sherbicki?

3 THE FORELADY: Guilty.

4 THE CLERK: And so say you all.

5 MR. LA ROSSA: May the jury be
6 polled?

7 THE COURT: Poll the jury, please.

8 THE CLERK: Ladies and gentlemen
9 of the jury, listen to your verdict as it stands
10 recorded.

11 You say you find the defendant
12 Carmine Guanti guilty.

13 You say you find Arnold Romano
14 guilty.

15 You say you find Dominick Romano
16 guilty.

17 You say you find Frank Sherbicki
18 guilty.

19 (Each juror, upon being asked by the
20 Clerk, "Is that your verdict?", answered
21 in the affirmative.)

22 THE COURT: I want to thank
23 you for the careful attention you gave to this
24 case and to your very conscientious deliberations.

25 I never comment on what I would

and making those answers?

A Yes.

Q "Q What did you do with these three suitcases?

"A Two suitcases I gave to Mr. Cahill and one of them I took packages out that were wrapped up in three or four kilo packages and upon the instructions of Mr. Barnier, according to the amount of moneys that he would receive in exchange he would say 'Give so many packages, so many kilos.'

"Q This is Cahill?

"A Yes, sir, this is Cahill."

Did you make those answers to those questions?

A I am sure I did.

Q Was it the truth?

A To the best of my recollection it was, yes.

Q Let us go back to November 17, 1961. At this conference that you had do you recall being asked concerning a delivery of suitcases to you in March of 1959 by Gossard?

A Yes.

Q Do you recall what you told the agents about those three suitcases and Mr. Gaffney and Mr.

TRANSCRIPT OF ARMONE TRIAL

arh9

Bourbonnais-cross

2537

A Yes.

Q Who is he?

A I believe he is in charge of the European division at the time.

Q Of the Bureau of Narcotics?

A Yes.

Q Did you have a discussion with him right after the seizure of the contents of these four suitcases concerning what would happen to you as a result of your cooperation, what rewards you would get?

A I don't recall that, sir.

Q Did you state in your petition that United States Attorney William Tandy, Mr. Martin Pera of the Bureau of Narcotics and other agents who participated in the seizure congratulated you?

A I don't think they went as far as congratulating me, no.

Q Did you state your cooperation was without doubt, and they stated to you, that your cooperation was without doubt complete and forthright and that by adopting this course of complete cooperation, you would receive the fullest consideration from the Government? Did you state that in your petition?

A It is possible as I say, my attorney filed it.

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TRANSCRIPT OF ARMONE TRIAL

arh

Bourbonnais-cross

2404

"Q What did you do with them eventually?

"A Mr. Barnier told me that he would instruct me as to when to give him some packages. There were some packages in these suitcases, wrapped up with a string."

Do you recall those questions and answers?

A Yes, sir, I do.

Q Were you asked these questions:

"Q You say this was about two or two and a half years ago?

"A Yes, sir, I would say so.

"Q Go ahead.

"A And this person, Joe, would give me the money, and Mr. Barnier would tell me to give him a package in return, so that he would give me more money, and I would take it back to Barnier. Do I make myself clear?

"Q Yes. So that what you are saying, in effect, is that out of the remaining suitcases you would from time to time, pursuant to Barnier's instructions, give a package or two packages to this man, Joe, and that at that time you would receive money from him?

"A That's correct.

"Q And that is the first occasion when this

Coscia was involved, is that correct?

"A That's correct."

Do you remember so testifying?

A Yes, but --

Q Yes. Now, when you appeared before this grand jury you mentioned the names of Earnier, right?

A Yes.

Q Gilbert Coscia?

A Yes.

Q Joe?

A Yes.

Q Nick?

A Yes.

Q And Tarditti?

A Yes.

Q As a matter of fact, you told this grand jury that you did not know anyone, referring to over here, but Nick and Joe, isn't that so?

c2 A That is right.

MR. KREMER: If your Honor please, I have a line of questioning devoted to this area concerning the lie detector test but naturally I am not in a

TRANSCRIPT OF ARMONE TRIAL

mmh8

Bourbonnais-cross

2436

A Yes, apparently I was, sir. I didn't know. I didn't see the man at the time or didn't recognize him.

Q You didn't recognize him?

THE COURT: We have been all through yesterday, Mr. Kasanof.

Q Where did the face to face confrontation take place?

A In Mr. Tandy's office.

Q In Mr. Tandy's office in this courthouse?

A In this building, yes, sir.

Q Who was present?

A Mr. Tandy was present, Mr. Hedges, of course, myself, and I believe there was another party there.

MR. LEWIS: Your Honor, it is difficult for me to hear the gentleman.

THE WITNESS: Mr. Tandy was present, Mr. Hedges, myself, and another gentleman, to the best of my recollection.

Q An agent?

THE COURT: If you know.

A I do not know whether he was an agent. I do not remember the fourth party.

Q But four and only four people were in that room?

TRANSCRIPT OF ARMONE TRIAL

msh9

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A There might have been four; there might have been five. I do not quite recall.

Q You knew Mr. Tandy from a prior occasion?

A Yes, I knew Mr. Tandy.

Q And you knew Mr. Dugan?

A Yes, I did.

Q And this was the first time that you confronted Mr. Hedges face to face?

MR. MORVILLO: Objection. This question has been asked and answered.

Q Apart from the so-called dealing? In terms of the investigation.

THE COURT: Let us put it this way, Mr. Kasanof.

Was this the first time that you saw Mr. Hedges face to face after your arrest?

THE WITNESS: As far as I know, yes, your Honor, it is.

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Q And you weren't asked to pick Mr. Hedges out of a lineup or a group of men, were you; yes or no, Mr. Bourbonnais?

A I cannot remember, sir.

Q When you came into that room was there a group of men lined up and were you asked to say which of these men is Charles Hedges?

A No, sir, I don't remember that.

Q There were only four people in that room?

THE COURT: Or five.

Q Or five at most. And you knew Mr. Tandy and you knew Mr. Dugan, isn't that right?

A With the Court's permission I would like to explain this particular--

THE COURT: You can answer that question.

A I did not recognize Mr. Hedges at that particular time. He himself said hello and recited the incident and the circumstances under which we met previously.

Q That is how you remembered him. Certainly it is clear you didn't pick Hedges out of a lineup. Do you know what a lineup is?

THE COURT: Let us not go into the lineup. He has explained the details. He said he didn't

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recognize Mr. Hedges, Mr. Hedges recognized him. So we don't need to get into the lineup.

Q When you walked into the room you said that you did not recognize Mr. Hedges?

A I did not, no, sir.

Q It wasn't until Mr. Hedges said something to you that you recognized him?

A I did not recognize him, sir. I recognized the incident of our previous meeting at the time of the delivery and the time he met me on 55th Street and First Avenue.

Q Will you tell us what happened when he met you on 55th Street and First Avenue?

A What happened, sir?

Q Yes.

A Mr. Hedges came to my car and he said "Joe sent me." He got into the car and he gave me a package containing some money, at which point I asked him if he would be working with me in the future and he replied that he did not know.

I suggested that just in case he should be working with me in the future, I suggested that he and I take a drive to LaGuardia Airport in the parking area in front of the American Airlines building.

Q They didn't pay you the full price?

A No.

Q Then what happened?

A Then on sailing day, July 29, I meet Charlie on the foot of Canal Street on the waterfront, and he paid me the \$8,000.

Q Then you--

A I went off for one more trip.

Q Did you have another trip where you made any deliveries after that?

A Yes, I have.

Q All right. Tell us about those.

A Then I left and I arrived back here to New York on September 9.

BY THE COURT:

Q Still 1959?

A 1959. I contacted Joe and informed him I had on a shipment for him. And I think Charlie called me back on the phone and we made an arrangement to meet in the city.

MISS KAHN: Your Honor, I object to what he thinks and move it be stricken.

THE COURT: When you say you think, Mr. Aspelund, is that to the best of your recollection that Charlie called you back or is it that you are not sure whether he did?

A No. I am sure. But I was just not sure if it was Charlie or Joe that called me.

Q I see.

A I will admit that.

BY MR. HULTGREN:

Q But one of the two called you?

A One of the two called me and a meeting point was made.

MISS KAHN: I object, your Honor, and move the answer be stricken as not binding on the defendant Hedges.

THE COURT: Objection overruled. The evidence will be received subject to the same duty on the part of the Government to connect it with the defendants.

Whether or not the call came from Charlie or from Joe, the witness has admitted candidly he is not certain of that, and therefore that may be inquired into on cross examination, if counsel is so advised.

MISS KAHN: Well, your Honor, I don't mind his being confused on dates and places, but as to the defendants I feel that this confusion is certainly prejudicial and should be stricken unless he can answer directly with some certainty.

THE COURT: The standard of certainty is, I think, a matter that goes to the weight of the testimony which the jury will be called upon to determine. Objection is

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overruled.

BY MR. HULTGREN:

Q As a result of this conversation what happened?

A There was made a meeting time at a point, between us, on 14th Street and 3th Avenue.

Q And who met there?

A When I went in there I had my wife with me in my car.

I park on the 14th Street and I was waiting there till Charlie showed up. And I had a talk with Charlie and I informed him what I had, and we tried to make an arrangement on which date he was supposed to come up and pick it up. In my house.

Q Did anything happen as a result of that talk?

A I was called one evening home and I went down to Howard Johnson where I picked up Charlie and brought him to my house.

Joe was in the other car.

He turned around and parked in a gas station and was waiting for Charlie till he come back from my house. When Charlie was in my house he was short one more time \$10,000.

I say to myself, "He paid me the other 8,000. I wouldn't have nothing to worry about.

He made the agreement and meet in a few days.

Q Did you deliver--

A I went down to the city and I meet--

Q Back at your house did you deliver the heroin?

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Aspelund—direct

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A I delivered the heroin to Charlie and he left the house.

Q All right. Then what happened?

A As I say before, I wasn't worried anything about the money. He was short the \$10,000 because he paid me the other 8,000 before. But this time I couldn't get the \$10,000.

I received a phone call from Charlie in where he demand for me to repay \$5,000 because the heroin was under the—the quality it was supposed to be.

Now on that particular time I had delivered to Santiago five samples from this shipment, and I know the stuff was a hundred per cent good so I know he was lying, and we went into a big argument on the telephone.

MISS KAHN: I object to it, your Honor, as not binding, any statement made by Santiago, or any business with Santiago who is not a defendant here is incompetent and irrelevant.

THE COURT: The objection is sustained so far as the witness's statement that he knew Charlie was lying. That part of the answer may be stricken and the jury instructed to disregard it.

That portion of the answer which relates to a conversation that Mr. Aspelund had with Santiago, that objection is overruled. The conversation between Mr.

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Aspelund and a named co-conspirator in the indictment, that evidence is received subject to the same ruling as heretofore made and the same conditions with respect to the Government's connecting it up.

BY MR. HULTGREN:

Q Now as I understand, Mr. Aspelund, you delivered some of this shipment to Santiago; is that correct? You delivered some of the shipment to Santiago?

A No, I did not. I took a sample, a small sample.

Q And delivered that to Santiago?

A That is correct.

Q And also, as part of this same shipment, you delivered to Charlie?

A I delivered the whole shipment to Charlie. If you take off one--if you take off each package just a willigram or how much you call it, a pinch on the finger, you could test that as a sample so far as I understand. That is all that was taken off.

Q But in any event, you got into an argument with Charlie on the telephone; is that right?

A Yes.

MISS KAEN: Objection, your Honor, as leading.

THE COURT: I will sustain the objection as to the form of the question.

BY MR. HULTGREN:

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Q What happened?

A That was all. It was last time I see Charlie.

Q Did you see him that day or just talk to him?

A I went in in the city where I meet him in Pappa's Restaurant. I had a friend with me, a friend, a friend of me. But he didn't see or hear anything of the conversation.

Q Well, did you get your money?

A I didn't get my money and he still owes me that.

Q Did you ever try and get in touch with Charlie thereafter?

A I try in different ways to locate him but it was just useless. I couldn't find him or Joe, either one of them.

Q How did you try and locate them?

A I went around in the different bars and restaurants I know where Joe used to hang around. Plus I called the telephone number ORegon 4-4197.

The answer was it is disconnected.

Q Did you ever get any writing, as to where to write to him?

A During the trips I made overseas forth and back, I asked Joe to give me an address to where I could write to inform them how many kilo I may have with me back from overseas.

One of the times before I was leaving, Charlie handed me over a piece of paper on the name and address of a person on Second Avenue. His name was Kerosene or something like that.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOMINICK ROMANO

Petitioner

-against-

74 Civ. 943 (LFM)

UNITED STATES OF AMERICA

Respondent

SIRS:

PLEASE TAKE NOTICE that the petitioner Dominick Romano hereby
appeals to the United States Court of Appeals for the Second Cir-
cuit from the of this Court, by the Honorable Lloyd F. MacMahon,
rendered on the 25th day of July, 1974, denying petitioner's
motion to vacate sentence pursuant to 28 U.S.C. 2255.

DATED: NEW YORK, NEW YORK
August 5, 1974

Yours, etc.

/s/ Andrew P. Zweben
ANDREW P. ZWEBEN

TO: HONORABLE PAUL CURRAN
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF
NEW YORK
UNITED STATES COURTHOUSE
FOLEY SQUARE
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Received 3 copies of the within
Appendix
this 18 day of Nov, 1974.

Sign _____

For: Hon Paul J. Curran Esq(s).

Att'ys for Respondent Appellee

